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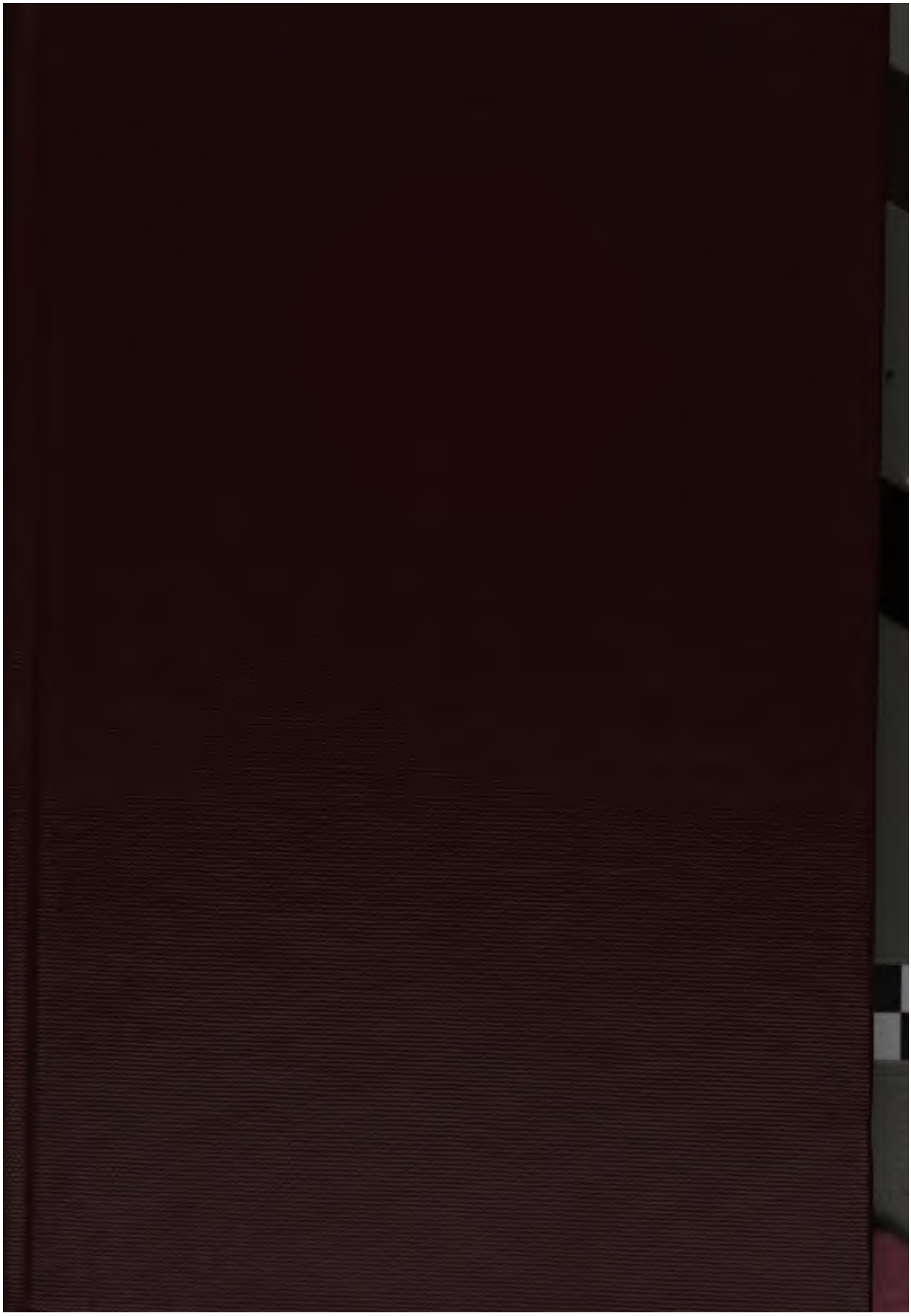

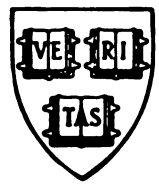

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The Mirror of Justices

Selden Society

MIRROR OF JUSTICES

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FOR THE SELDEN SOCIETY
BY
WILLIAM JOSEPH WHITTAKER

WITH AN INTRODUCTION
BY
FREDERIC WILLIAM MAITLAND

LONDON
BERNARD QUARITCH, 15 PICCADILLY
1895

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INTRODUCTION.

Discovery of the *Mirror*

In the sixteenth century when the printing press was at work and the manuscript treasures of the monasteries were passing from hand to hand, English lawyers began to turn back their eyes to the old days when our law was first taking a definite shape. The names and the books of Glanvill and Bracton, of Britton and Hengham became current once more. Along with weightier matters there had floated down the stream of time an enigmatical treatise, *The Mirror of Justices*. The first tidings that we get of it are given us by Plowden in his report of a case that was argued before the Exchequer Chamber in the year 1550. He represents Bradshaw, the king's attorney, as contending for the rule *Testis unus testis nullus*, which may be deduced from the book of Deuteronomy; and (said Bradshaw) in ancient times the law of this realm was similar, as is expressed in the book called the *Mirror of Justices*, which was made before the Conquest.[1] The learned attorney had perhaps but cast his eyes upon the book that he thus cited; a careful examination of it he cannot have made. However, from this time forward we begin to see that manuscript copies of the book are being handed about among lawyers. Coke obtained one, and, as his habit was, devoured its contents with uncritical voracity. 'I have,' he said, 'a very ancient and learned treatise of the laws

[1] Plowden, *Commentaries*, 8.

'abuse' that the king is beyond the law to which he ought to be subject. The title page of the printed book bears the words 'La Somme appelle Mirroir des Justices vel Speculum Iusticiariorum, factum per Andream Horne.' No editor is named, but a Latin note tells us in effect that the text used was a transcript belonging to one Jecell (no doubt the antiquary Thomas Jekyll, who died in 1653[1]), which had been copied from a transcript belonging to Francis Tate (another well-known antiquary) but collated with the ancient manuscript then lying in Benet (now Corpus Christi) College at Cambridge. In 1646 there appeared an English translation by W[illiam] H[ughes], which was republished in 1768 and again in 1840. In 1776 Houard included in his *Traités sur les Coutumes Anglo-Normandes* the first four of the five sections into which the book is divided; the fifth he rejected as being in his opinion a supplement added to the original work by a later hand. It is plain enough that this industrious Norman lawyer, who did much for which we ought to be grateful in publishing our English law-books to the continental world, had no text of the *Mirror* but the poor printed text of 1642, and, as he shows by his conjectural emendations, he was painfully aware of its imperfection. This indeed was known to W. H. in 1646, for he says 'And although that the Manuscript Copy be in the Originall very imperfect: the French impression' [that of 1642] is 'by misjoining of words in many places without sence, and false printed.'[2]

The unique manuscript

Several seventeenth century copies of the book, including in all probability those that were used in 1642, still exist; but Mr. Whittaker has satisfied himself that they are all derived immediately or mediately from the Corpus manuscript, and that seems to be the one and only medieval manuscript of the *Mirror*.

[1] *Dict. Nat. Biography.*

[2] Translator's preface. Houard, vol. iv. p. 469, says: 'Mais de quelque manière qu'on envisage le travail pénible que la corruption du Texte a exigé, il n'y aura surement pas un Lecteur qui ne convienne que, sans ce travail, le Texte n'a pu être jusqu'ici entendu des Anglois, et qu'il n'auroit pas été possible en France d'en tirer le moindre secours.'

and usages of this kingdom whereby the commonwealth of our nation was governed about eleven hundred years past.'[1]

The *Mirror* becomes classical

However, though Coke believed that he had acquired a treatise which set forth the law of King Arthur's day, he did not think that it was written in that very distant age, and he explained away the words by which Bradshaw seemed to have given it a date on the other side of the Norman Conquest. A very slight inspection of it was sufficient to show that it could not as a whole have been compiled before the reign of Edward I. Nothing daunted, the credulous Coke filled his Institutes with tales from the *Mirror*, and, for example, believed that he had a precedent of an appeal of treason which came from the days of King Edmund and in which the appellor's name was Rocelyn and the appellee's was Waligrot.[2] His final opinion seems to have been that the book was written for the more part before the Conquest, but that many things were added to it by one Horn, a learned and discreet man who flourished in the reign of Edward I.[3]

The *Mirror* on its trial

It would be long to tell how much harm was thus done to the sober study of English legal history. The Pseudo-Ingulf himself has hardly done worse. Gradually suspicions collected. It became known that the *Mirror* was to be used with some circumspection, that it was not to be put alongside of Glanvill and Britton as a co-ordinate historical authority.[4] At length the illustrious scholar who delivered us from the Crowland forger spoke out his mind about Horn and the *Mirror*: though it is 'a very curious specimen of the apocrypha of the law,' said Sir Francis Palgrave, 'we are compelled to reject it as evidence concerning the early jurisprudence of Anglo-Saxon England.'[5]

The *Mirror* printed

Meanwhile it had been put into print. This happened in 1642, a marvellously appropriate date for the appearance of a book which proclaimed as the first and sovereign

[1] Coke, Preface to 9 Rep.
[2] Third Institute, 5.
[3] Coke, Preface to 10 Rep.
[4] Reeves, *Hist. Eng. Law* (ed. 1787), vol. ii. pp. 358-9, speaks cautiously and judiciously.
[5] Palgrave, *English Commonwealth*, vol. ii. p. cxiv.

'abuse' that the king is beyond the law to which he ought to be subject. The title page of the printed book bears the words 'La Somme appelle Mirroir des Justices vel Speculum Iusticiariorum, factum per Andream Horne.' No editor is named, but a Latin note tells us in effect that the text used was a transcript belonging to one Jecell (no doubt the antiquary Thomas Jekyll, who died in 1653[1]), which had been copied from a transcript belonging to Francis Tate (another well-known antiquary) but collated with the ancient manuscript then lying in Benet (now Corpus Christi) College at Cambridge. In 1646 there appeared an English translation by W[illiam] H[ughes], which was republished in 1768 and again in 1840. In 1776 Houard included in his *Traités sur les Coutumes Anglo-Normandes* the first four of the five sections into which the book is divided; the fifth he rejected as being in his opinion a supplement added to the original work by a later hand. It is plain enough that this industrious Norman lawyer, who did much for which we ought to be grateful in publishing our English law-books to the continental world, had no text of the *Mirror* but the poor printed text of 1642, and, as he shows by his conjectural emendations, he was painfully aware of its imperfection. This indeed was known to W. H. in 1646, for he says 'And although that the Manuscript Copy be in the Originall very imperfect: the French impression' [that of 1642] is 'by misjoining of words in many places without sence, and false printed.'[2]

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Life of Andrew Horn

Our book has long been connected with the name of Andrew Horn, and therefore of Andrew Horn, fishmonger of Bridge Street and Chamberlain of the City of London, we must say a few words. Early in the reign of Edward I. there was a John Horn alderman of Bridge Ward, who served the City now as sheriff now as coroner.[1] Andrew may have been his son, and, if so, came of a good civic family. Late in the fourteenth century we again hear of a John Horn who is fishmonger and alderman.[2] Already in 1305 Andrew was married, for in that year was born to him a son, who, however, lived for but twelve weeks.[3] Andrew himself died in 1328, and we may guess from his will that he left neither wife nor child, for his property was to be divided between his brother William Horn, rector of the church of Rotherhithe, William and Simon Doggett his nephews, and Christina his niece.[4] His executors were his brother William, John atte Vyne and Master John of London, a notary. Already we hear of Andrew in 1308, when along with Richard Horn, Stephen Horn, and other fishmongers, he was sworn to scrutinise the fishmongers' baskets, and one of his own baskets was found deficient in capacity.[5] In 1315 he passed scatheless through a similar ordeal.[6] In 1320 he became Chamberlain of the City, and this post he filled until his death in 1328; but so early as 1311 he had been collecting statutes, charters, and other documents, and having them transcribed for him.[7]

The civic Chamberlain

The time at which he was called to take charge of the chamber of the City was critical. For nearly forty-four years London had been spared the terrors of a judicial eyre. In 1321 justices were sent to sit at the Tower. There they sat for four-and-twenty weeks, and even then they left their work unfinished.[8] Apparently it was in order

[1] Riley, *Memorials*, 3; *Liber de Antiquis Legibus*, 148, 154, 225; *Liber Custumarum*, i. 239, 240, 291, 295.

[2] Riley, *Memorials of London*, 371, 431.

[3] Stubbs, *Chronicles of Edward I. and Edward II.* vol. i. p. xxiii.

[4] Sharpe, *Calendar of Hustings Wills*, i. 344–5.

[5] *Liber Custumarum*, i. 120; *Liber Albus*, i. 467.

[6] Riley, *Memorials*, 116.

[7] Sharpe, *Calendar*, i. 344.

[8] *Liber Custumarum*, pp. lxxxiv, c.

Veteribus Legibus Angliae, together with (3) a book called *Bretoun* and (4) a book called *Speculum Iusticiariorum*; also (5) a book compiled by Henry of Huntingdon, and (6) a book *De Statutis Angliae* with many liberties and other matters touching the city.[1]

The Corpus manuscripts

It seems fairly certain that some of Horn's gifts are at this day where they ought to be, namely, at the Gildhall. It is also fairly certain that some of them passed into the possession of Sir Robert Cotton and are now represented by a volume preserved at the British Museum (Claudius, D. II.), while others can, so I think, be traced with some certainty through the hands of Archbishop Parker into the library of that college upon which he bestowed many a priceless treasure. We find there in one volume (C. C. C. 258) a copy of Britton bound up with the unique copy of the *Mirror*. We find also another volume (C. C. C. 70), which deserves our attention. It might well be called a *Liber de Veteribus Legibus Angliae*. It contains that composite body of legal materials which Dr. Liebermann has recently described under the title *Leges Anglorum saeculo XIII. ineunte Londoniis collectae*, and which, for the sake of brevity, I will call Dr. Liebermann's law-book.[2] That law-book comprised a Latin version of some of the Anglo-Saxon dooms; also the Leges Edwardi Confessoris, the Leges Willelmi, the Leges Henrici; also Glanvill's text-book, and some other matters. Its contents were hitched together into an historical sequence by some royal genealogies and brief remarks about the doings of the kings. The collector, however, depraved his materials by many

[1] Sharpe, *Calendar of Hustings Wills*, i. 344. Mr. Riley's theory (*Liber Custumarum*, i. pp. i–xxiv) was that No. 2 and No. 6 are represented by the *Liber Horn* of the Gildhall; that No. 1 is divided between the *Liber Custumarum* of the Gildhall and the Cottonian Claudius D. II. Dr. Stubbs (*Chronicles of Edward I. and Edward II.* p. xxiii) thinks that 'this identification is very much matter of speculation.' However, that the Cottonian volume is made up of sheets that came from the Gildhall is, I suppose, indubitable. Then Dr. Stubbs has conjectured that No. 5 was Henry of Huntingdon's chronicle with a continuation represented to us by the now acephalous *Annales Londonienses*.

[2] Liebermann, *Ueber die Leges Anglorum*, Halle, 1894. We have to thank Dr. Liebermann for drawing our attention to this manuscript by kind and learned letters.

original work; between 1293 and 1301 there is an hiatus; from 1301 to 1316 it contains, says its editor, 'a relation which is simply invaluable of the closing events of the one reign and the early troubles of the next.' 'At the year 1316 the narrative breaks off again, and the remainder of the work contains only a few memoranda of records belonging to the civil history of London at the opening of the reign of Edward III.' These continue until 1330, where the book ends. Now, that the important part of the *Annals* comes from a Londoner, and one who had access to many public documents, cannot be doubted. Dr. Stubbs has shown cause for the conjecture that this part comes from Andrew Horn. His argument is twofold. Under the year 1305 the annalist tells, among the events of national history, that a child was born to Andrew Horn, lived twelve weeks, and was buried at Coleman church. In the second place, these *Annals* contain a large number of documents which are also contained in that Liber Custumarum which Horn bequeathed to the chamber of the Gildhall.

Horn and the ecclesiastical courts

If for a moment we accept this identification of the chronicler with Horn, we shall think of the civic Chamberlain as of one who could write good, straightforward annals, a rational, observant man, interested in public affairs, and alive to the value of records and state papers. If we seek for any more distinctively personal trait, we shall find it in his constant references to the doings of the ecclesiastical courts, and to the disputes occasioned by the benefit of clergy and the right of sanctuary. This is so marked that Dr. Stubbs has thrown out the suggestion that 'Andrew Horn, if he were the author, may have held with the chamberlainship of the city some office in connexion with the Court of Arches,' and though this suggestion is set aside by its maker in favour of another, it is one that we shall have to remember.

Horn's last will

On October 9, 1328, Horn made his will, and thereby he bequeathed to the chamber of the Gildhall certain books, to wit (1) a great book *De Gestis Anglorum*, wherein are contained many useful things; (2) another book, *De*

Veteribus Legibus Angliae, together with (3) a book called *Bretoun* and (4) a book called *Speculum Iusticiariorum*; also (5) a book compiled by Henry of Huntingdon, and (6) a book *De Statutis Angliae* with many liberties and other matters touching the city.[1]

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[2] Liebermann, *Ueber die Leges Anglorum*, Halle, 1894. We have to thank Dr. Liebermann for drawing our attention to this manuscript by kind and learned letters.

mythical interpolations, which seem to have had two main purposes: first, the glorification of the City of London, its privileges and customs; secondly, the assertion of an ancient but enduring supremacy exercised by England and the English king over the whole of Britain and the adjacent islands. In Dr. Liebermann's opinion this work was put together by some Londoner of John's reign. Now in the manuscript that is before us (C. C. C. 70) we have of this book a copy written in the early years of the fourteenth century. A half-hearted attempt has been made to carry on the historico-legal discourse into the reigns of Henry III. and Edward I. In the first place, however, we must notice that at the foot of one of the pages (p. 101) we see the following legend in red ink:—'Horn michi cognomen Andreas est michi nomen.' Above this is drawn a fish. This seems to tell us that this manuscript once belonged to Andrew Horn the fishmonger.

The Liber de Veteribus Legibus

But, further, the hand which wrote this legend seems to have written a good many rubrics and marginal notes. Close to the end of the volume it gives us an important remark. The text has come down to Henry III.'s reign, and has begun in a desultory way to set forth some precedents for pleaders. Abruptly it stops, and what we may take to be Horn's hand writes as follows:—'But no more of this, for you have enough of it in the two subsequent books, namely the book called the Mirror of Justices and the book called Brethun. But these books are not sealed by the king. However, such was the form of pleading in the times of Edward I. and Edward II.'[1] We see, then, that the writer of this intends that Dr. Liebermann's law-book shall, in some sense or another, be followed by the *Mirror* and Britton.

Horn and the London law-book

At the top of the next page he tells us a little of Edward I., remarking that he made many statutes which

[1] C. C. C. 70, p. 190: 'Non erit plus nunc, quia satis habes in ij. libris subsequentibus, videlicet, libro vocato Speculum Iusticiariorum et altero libro vocato Brethun. Sed non sunt libri sigillati per Regem. Attamen taliter placitabantur [brevia] temporibus Regum Edwardi filii Regis Henrici III. et Edwardi filii Regis Edwardi.'

are confirmed by his seal, but which are not inserted in this manuscript. He then gives a long list of the titles of Edward's statutes, observing by the way that the Statute of Westminster the Second is *peroptimum*. This list ended, he tells us that these statutes will not be set forth in this book, 'for I have them elsewhere, and I intend, please God, at some future time to compose out of this and other books a large volume, for I have thought it useful that the events of our own time should be handed down to posterity.'[1] After this he notes the names of the legal text-books produced under Edward I.: namely, Hengham, *Fet a saver*, and so on. Then he tells us that Edward I. confirmed the Londoners' privileges: 'the tenour of his charter is not in this book, but I have it elsewhere.'

All this seems to come from a man writing in Edward II.'s day, who has a great mass of historical and legal materials at his command, and some large projects before his eyes. We can hardly doubt that his voice comes to us from the chamber of the Gildhall, or that it is the voice of Andrew Horn.

Horn and the Canon Law

One of his notes seems to tell us that this London archivist is interested in ecclesiastical law, and has tried to find his way among the books of the canonists. The Anglo-Saxon law that lies before him speaks of the ordeal. He observes in the margin that this mode of purgation was condemned by Pope Innocent III. in the reign of King John, about the year 1205, 'per decretales libr. v. capitulo de purgacione vulgari.' Thereupon he sets forth a decretal of Honorius III., which appears in the Gregorian collection.[2] Then he adds that the ordeal was first canonised by the

[1] C. C. C. 70, p. 191: 'Ista statuta quorum prohemia hic intitulantur in libro isto non scribentur nec registerio, quia alibi habeo, et quia intendo ex libro isto et aliis imposterum, deo dante, magnum codicem componere, quia utile duxi posteris presencia temporum nostrorum exprimere.'

[2] It is c. 3, X. 5. 35. The blunder is not one that is easily corrected, for if we suppose that *Innocentius* is a mere clerical error for *Honorius*, the reference to John's reign and 1205 will go wrong. The true date of the decree of Honorius seems to be 1222. One would have expected a citation of the decisive decree of the Lateran Council of 1215, and the mention of Innocent and of 1205 may be due to some faulty recollection of that Council's doings.

Council of Tribur, and quotes a decree of that Council and another of the Council of Mainz, 'secundum antiquas decretales per Bernardum Papiensem compilatas.'[1] So he probably has at his command some books of canon law, though he does not seem to be an expert in their use. This indication of a smattering of canonical learning may be of some service to us hereafter.

Horn's Germanism

To one other small point Dr. Liebermann has called attention. The annotator of this manuscript had heard German speech, and held that the Germans of his day spoke the tongue which the Saxon invaders of Britain had once spoken:—'Anglorum genus primo veniebat de illa Saxonia et in diebus modernis loquuntur tali lingua sicut Angli antiqui olim loquebantur.' He then proceeds to tell us that in Germany the King stands first, then the Duke, then the Margrave, then the Landgrave, then the Count, then the Baron, then the Knight. A trifle this may seem; and, no doubt, the Chamberlain of London had occasion to converse with Hanseatic merchants; but even trifles may be of importance to us when we are investigating the genesis of a mysterious book.

The manuscript of the *Mirror*

And now we turn to the other volume (C. C. C. 258), which contains the *Mirror* and Britton bound up together. The hand which writes the *Mirror* seems to me to be a curial hand of the early part of the fourteenth century. We shall see hereafter that it is the hand of a somewhat stupid or careless clerk. The *Mirror* fills four quires of twelve folios, which are followed by a quire of four folios, the last folio being left blank. The more important capital letters and the paragraph marks are in red. There is evidence on the first folios of an intention to supply marginal rubrics. Also we can see that the rubricator's task had been marked out for him in the once ample

[1] The reference seems to be to Compilatio Prima, 5, 30 (Friedberg, *Quinque Compilationes*, p. 62). The passages which are cited appear in the Gregorian collection as c. 1, X. 5. 34, and c. 2, X. 5. 38; but in the Gregorian collection all reference to the ordeal has been carefully expunged from them. As to the action of the Councils of Tribur and Mainz, see Lea, *Superstition and Force* (4th ed.), p. 291.

margin by chalk or some similar substance, but the margin has been sadly shorn by a binder. This is the more unfortunate, for over a word that puzzles us we may now and again see a faint cross, which once referred to a correcter word written in the margin; but most of these emendations have perished under the shears.

Horn's name-verse

On the first page there stares at us in red ink Andrew Horn's name-verse:—'Horn michi cognomen Andreas est michi nomen.' It seems to me hardly doubtful that the hand which wrote this was the same hand that wrote the same words in that other manuscript which has lately been described. However, in the present case this name-verse may have a context. I wish that it were possible to set before the Society an exact facsimile of the first lines of the manuscript; but I must endeavour to find words that will describe them. At the top of the page the copying-clerk wrote *Liber Primus*. Then below this a person, whom I will call the rubricator, wrote in red ink, *Iste liber vocatur speculum iusticiariorum*. He inserted these words after *Liber Primus* had been written, for they curve round *Liber Primus*. Then come four would-be verses (three hexameters followed by one pentameter), written in black ink by the copying-clerk. Then, without any interval, comes a fifth verse (an hexameter), written in red ink by the rubricator. This fifth verse is Horn's name-verse. These five verses occupy three of the ruled lines of the book, so that the end of a verse never comes at the end of a line. The last word of the fifth, the red, verse juts out into the right-hand margin. On the next line the text of the *Mirror* begins.

The mysterious verses

Now, a great deal depends upon the question whether there is any connexion between the first four lines and the fifth. I regret that a judgment on this point must be expected of anyone who writes an introduction to the *Mirror*; but on the whole, if (postponing for a while any discussion of the meaning of these verses) we look only at their collocation on the parchment that lies before us, I think that our decision will be that from the first it was intended that the four black verses should be followed by a

fifth red verse, and that all five verses should be regarded as an integral part of the book that is called *Speculum Iusticiariorum*. It seems to me that space is left for this fifth verse as space is left for other rubrics. It seems to me that the hand that writes this verse is the hand that writes *Iste liber vocatur speculum iusticiariorum*, and that writes other rubrics on the first pages of the book. Lastly, it seems to me that this fifth verse was written by the man who wrote the same verse in the other manuscript. Putting all this together, we are brought towards the conclusion that this very exemplar of the *Mirror* not only belonged to Horn, but was produced under his direction.

Meaning of the verses

So much as to externals. And now let us grapple with the meaning of these mysterious verses. Here they are:—

Hanc legum summam si quis vult iura tueri
Perlegat et sapiens [1] si vult orator haberi;
Hoc apprenticiis ad barros ebore munus
Gratum [2] iuridicis [3] utile mittit opus.
Horn michi cognomen Andreas est michi nomen.

Horn and Ivory

What can we make of these verses? Of course, it is possible for us to detach the fifth from the other four, and to say of it that it is a mere 'name-verse' recording the fact that the codex that lies before us is the property of Andrew Horn; and, indeed, we have in the other volume evidence that Horn used this hexameter for this very purpose. But if we take this course, a difficulty awaits us when we strive to construe the four preceding lines. The first two are easy enough. They amount to this:—Anyone who wishes to study the laws and become an accomplished pleader should read this book. But what of the next two lines? What in the name of sense, to say nothing of metre, have we to do with ivory (*ĕbore*)? To my friend Dr. Verrall I owe the suggestion that the five verses must be read together, and that the mysterious Ivory of the third

[1] End of first line.
[2] End of second line.
[3] The word *iuridicis* has been deliberately erased, apparently in recent times. It is supplied from a copy of the verses which has been written at the bottom of the page by a modern hand.

is explained by the Horn of the fifth. Were there not two gates through which dreams came to mankind? Horace, Vergil, and Statius all said so. The following English version comes from Dr. Verrall's pen:—

> Read me, whoe'er the substance of the laws
> Desires to see, or plead with sage applause.
> Here Ivory's grace attracts apprentice eyes,
> While profit for the coif our book supplies.
> Horn—Andrew Horn—the author is who writes.
> (*Aside*) Thus Horn with Ivory, Truth with Grace, unites.

The writer puts an enigma before us. Dr. Verrall's last line gives the solution. Here for the apprentices at the bar are pleasant visions of the law that are not too true; here for their seniors are profitable things that are not so pretty. Horn is my name, but you have Ivory also here. Quite independently, Professor Vinogradoff has said that *Wahrheit und Dichtung* would have been a proper title for the *Mirror*.[1] Is not *Horn and Ivory* a tolerable rendering of *Wahrheit und Dichtung*?

The question of authorship postponed

The author of the *Mirror* was, as we shall soon see, capable of beginning his work with riddles and mystifications, and since we cannot say either that Andrew Horn has unambiguously asserted that he was its author, or that the composer of these verses was beyond the temptation to drag ivory or anything else into them when he was racking his brains for a word that would (or, rather, would not) 'scan,' we had better leave both chamberlain and poet out of account for a while, treat the book as one whose paternity is unknown, and try to discover from internal evidence its date, its nature, and its purpose.[2]

[1] *Villainage in England*, p. 416.

[2] Lest Dr. Verrall should be charged with conjectures of which he is not guilty, I must not omit to say that the question about which he kindly gave me his opinion was merely the question whether a meaning could be found for these verses, more especially for the mysterious *ebore*. He has not said that Horn wrote the *Mirror* or professed to have written it. Several distinct theories are possible: (1) Horn wrote the *Mirror* and all five verses. (2) Horn did not write the *Mirror*; the first four verses come from its author; the fifth is but Horn's claim to be the owner of a certain MS. (3) Horn did not write the *Mirror*, but he wrote all the five verses.

The author in prison

A blunder in the edition of 1642 has hitherto concealed from view the cardinal words of the book. It is thus that the author introduces himself to his readers:—'I, the prosecutor of false judges, and by their procurement falsely imprisoned, searched out the privileges of the king and the old rolls of his treasury wherewith my friends solaced me during my sojourn.' He wishes us to believe that he has been thrown into prison by the false judges whose unrelenting enemy he is, and that while in gaol he studied charters and documents and compiled his book.

Is the imprisonment a fiction?

Is this tale true? Perhaps it may be; but let us remember that a similar tale stands at the beginning of another law-book coeval with the *Mirror*. The book that we call *Fleta* purports to have been written in the Fleet Gaol. Some have suggested that it was written by one of the justices whom Edward I. imprisoned in 1289. The thought may cross our minds that the *Mirror* is a rival book; but these two tales of imprisoned text-writers do not corroborate each other. On the contrary, they cannot but raise a suspicion that, at least in one of the two cases, the author's incarceration is a 'common form,' a literary device which will awaken interest and sympathy. At any rate we can see that a man who is going to pose as the prosecutor or sworn foe of false judges has a good deal to gain by pretending that he was imprisoned by their procurement, even though his sojourn in gaol was of that easy and improbable kind that was solaced by a perusal of the rolls of the king's court, to say nothing of the Old and New Testaments 'and the canon and the written law.' But whether the story be true or false, it is here that the author strikes the keynote of his book. He is, or wishes to be taken for, an enemy of false judges, who himself has suffered by their misdeeds.

The *Mirror* a failure

One other resemblance there is between the *Mirror* and *Fleta*. Both of them were failures; of each we have only one manuscript. On the other hand, the treatises of Glanvill, Bracton, and Britton were exceedingly successful; they are represented by numerous copies. Even of Bracton's lengthy book at least some forty costly examples

have come down to us. The *Mirror* was not taken very seriously by those who lived when it was written.

Date of the *Mirror*

When was it written? The common answer to this question is that the whole of it cannot have been compiled before the reign of Edward II. Now in some sense or another this statement must be true, for undoubtedly Edward II. is mentioned in this book.[1] But who is this Edward II.? Is he the king who came to the throne in the year 1307? We ought to ask these questions, for we ought to remember that the king who came to the throne in 1272 did not call himself Edward I. In official documents he was simply King Edward, and when he was dead such documents were wont to call him 'King Edward son of King Henry,' thus distinguishing him from King Edward son of King Edward. Again, when two Edwards had been immediately followed by a third, and it was necessary to number them, men were careful to fix the moment at which the enumeration was to begin: the reigning king was 'Edwardus *post Conquestum* tertius.' As to Edward fitz Henry, his contemporaries might call him the first or the second or the third or the fourth, according to the extent of their historical knowledge. Few, perhaps, would remember Edward the Elder or Edward the Martyr, but all men had heard of Saint Edward.

Who is Edward the Second?

What, then, is it that our author tells of 'Edward the Second'? This, that until his day the punishment of rape was mutilation. This seems to be a plain reference to a chapter in the Statute of 1285, which made rape a capital crime[2]—a chapter against which the compiler of the *Mirror* has, as we see from other passages,[3] a special grudge. And it is not unlikely that he will call our Edward the First 'Edward the Second.' He knows Saint Edward,[4] but nowhere shows any acquaintance with Edward son of Alfred or Edward son of Edgar.[5]

[1] Below, p. 141.
[2] Stat. West. II. c. 34.
[3] Below, p. 28, and Abuse 117 (p. 172); also p. 195.
[4] Below, p. 81.
[5] The editor of 1642 further argues that the book must have been written before 17 Edw. II. His argument, though it seems to me to come to a conclusion that is true.

The *Mirror* written under Edward I.

We must find better arguments. Now, our author ends his work with a criticism of statutes which are brought under review in an order that is nearly chronological. He comments on Magna Carta, on the Statutes of Merton (1236), Marlborough (1267), Westminster the First (1275), Gloucester (1278), *De Viris Religiosis* (1279), Westminster the Second (1285), Winchester (1285),[1] upon the writ *Circumspecte Agatis*, which is attributed to 1285, and upon the Statute of Merchants, which was made in the same year. The last document he calls a new statute.[2] Here he stops, and I cannot find any allusion to a later statute. Now, unfortunately for us, the age of grand legislation is nearly over by the end of 1285. Still from 1290 we have the famous *Quia Emptores*, which our author would have regarded as a sovereign abuse;[3] from 1295 we have the *De frangentibus prisonam*, which he ought to have mentioned had he known of it,[4] while the *Confirmatio Cartarum* of 1297 with its new clauses, and the *Articuli super Cartas* of 1300, would have afforded him abundant materials for criticism and cavil. On the whole, it seems to me that if this book had been newly put into our hands and we had never heard of Andrew Horn, we should have said that it was written very soon after 1285, and probably before 1290. And here it may be noted that if we attribute it to this time we attribute it to the only, or almost the only, time in English history when a sweeping denunciation of the king's justices as perjurers, murderers and thieves would have had enough truth in it to be plausible and popular. This is the time of our one great judicial scandal, for though

rests upon several propositions that I believe to be untrue: namely, (1) that the document known as *Praerogativa Regis* is a statute; (2) that its date is 17 Edw. II.; (3) that the author of the *Mirror* is incapable of representing as an 'abuse' what is the existing law of the land. As to the first two of these premises, see *Engl. Hist. Rev.* vi. 367. The third is contradicted by almost every page of our book.

[1] Below, pp. 27, 48. This, however, does not appear among the statutes criticised in the last book.

[2] He gives his last section to 'the new statute about debts.' This may be the Statute of Acton Burnel (1283), but, since he mentions it after Stat. West. II. and *Circumspecte Agatis*, it is more probably the supplementary *Statutum Mercatorum* of 1285.

[3] Abuse 151 (p. 175) and p. 181 (c. 32).

[4] Below, pp. 150, 156 (Abuse 8).

justices and clerks who suffered in 1289 may not have been worse men than were some of their predecessors and successors, the exposure of judicial iniquities on a large scale is a unique event. Also we shall see hereafter that the political ideals of our author were such as were becoming antiquated even in Edward I.'s day. However, we must once more repeat that we have before us a man who is quite capable of deliberately mystifying his readers.

No traces of an older time

For arguments to prove that the *Mirror* was not compiled in the days before the Conquest there can be no need at the present time. But, further, it does not look in the least like an old treatise that has been re-edited by a more modern hand. To those who are learned in the history of the French language, more especially of that dialect of it which was current in England, we must leave all criticism of words and grammatical forms; but any traits that would point to a time before Edward I.'s reign have been sought in vain. Express references to his statutes are found in all parts of the book,[1] while almost every sentence in it, though Cnut or Alfred or Arthur may be mentioned, has its point in the thirteenth century and in no earlier age. In particular we must decisively reject the theory that the last section of the work—that which deals with 'abuses'—has been tacked on by an editor or continuator to the end of a previously existing book. We have been carefully prepared by the author himself for this last section. His plan is to lay down in one of the earlier sections some doctrine which, as he knows full well, is not the doctrine of King Edward's court, and then to state in the last section that the prevailing doctrine is an abuse, or that Alfred hanged a judge for maintaining it. From first to last he is making an attack on 'false judges.'

The author's ignorance of old law

If he knew anything at all about the law of the Anglo-saxon or of the Norman time, he has studiously kept his knowledge to himself. This is one of the difficulties which

[1] Below, p. 27, Statute of Winchester; p. 28, Statute of Westminster II.; p. 48, Statute of Winchester; p. 52, Statute of Westminster I.; p. 66, Statute of Westminster II.; p. 138, an ordinance of Henry III.; p. 141, Statute of Westminster II.

meet us if we try to identify him with Andrew Horn, who before the end of his life had at his command the law-books of the twelfth century and a Latin version of the Anglo-Saxon dooms. I do not think that the *Mirror* contains one sentence that has been taken at first hand from the so-called Leges Edwardi Confessoris, Leges Willelmi, or Leges Henrici, to say nothing of the laws of Cnut or of his predecessors. What is more, if we consider the would-be antiquarianism of this book, we must pronounce it to be marvellously innocent, not only of real historical research, but of traditional legendary learning. We have nothing of Brutus, nor of the metropolitan relation which Troy bears to London; not much of Arthur;[1] nothing of Edgar; nothing of the tripartite division of England between Danish, Mercian, and West Saxon law. Saint Edward is not made the hero of the tale;[2] the Norman Conqueror shows no preference for the Danelaw: indeed, the Norman Conqueror is never named. Our author's hand is free, and he is quite able to do his own lying for himself, without any aid from Geoffrey of Monmouth or any other liar. He will not merely invent laws, but he will invent legislators also; for who else has told us of the statutes of Thurmod and Leuthfred?[3]

The author's wilful falsehoods

The right to lie he exercises unblushingly. Now and again we may see traces of some little circumspection. A good instance is given us by the daring fable about the forty-four false judges whom Alfred hanged in the space of a year.[4] He is going to know the names of these judges, and he thinks that he had better not give them the names current in the England of his own day. Henry, John, Richard, Robert, Ralph, Roger will not do. So let them be Watling, Billing, Bermond, and so forth. Watling Street, Billing Gate, and Bermond's-eye give him useful suggestions. Botolph, Cuthbert, Dunstan, Cede seem pretty safe to a man who goes to church. There is no one to tell him that

[1] See below, p. 3.

[2] He appears on p. 81 as protecting the villains and doing vengeance on those who persecute them.

[3] Below, pp. 107, 152. Can it be that the mysterious Leuthfred was a kinsman of Pope Eleutherius whom Dr. Liebermann's Londoner forged a famous letter?

[4] Below, p. 166.

he had better keep clear of Scandinavian names (and somehow or another he has collected a good many of them), or that Yve and Tristram and Talebot look a little too French or romantic. And then as to the names of the towns whose suitors are to be sent to the gallows, he chooses Dorchester, Cirencester, and Ancaster. If names ending in *chester* are not old, what names are? Let us remember among the exploits of Alfred that he hanged Horn[1]—'Horn michi cognomen.' But even the rudimentary caution that we see in this choice of names is rare. Our author knows nothing and dreams nothing of a time before feudalism and knights' fees, of a time when as yet trial by jury had not been invented. If he has heard or read of ancient law, of thegns and ceorls, of *bót* and *wer* and *wite*, of *grið* and *mund*, he leaves all this outside his story.

Imaginary legislation

Unless fortune has served him or us very ill, we must hold that he did not scruple to invent tales about times much later than those of Alfred. He ascribes a good deal of legislation to Henry I.,[2] Henry II.,[3] Richard,[4] John,[5] and Henry III.[6] Some of the tales that he tells of them are not obvious anachronisms; but this general rule holds good, that he says what others have not said and does not say what others have said. For laws of Henry I. (and of Henry I.'s name he is very fond) he does not go to Henry of Huntingdon, nor to William of Malmesbury, nor even to the Leges Henrici; for laws of Henry II. he does not go to the Gesta, nor to Hoveden, nor to Diceto, nor to Glanvill's book. He does not go to Glanvill's book even when he is going to speak of Glanvill.[7] He is not corroborated; he scorns corroboration.

[1] Law, p. 168.

[2] Below, p. 14, security for prosecution; p. 14, curtesy; p. 50, appeal of homicide; p. 59, imprisonment; p. 64, mainprise; p. 64, suit of messes; p. 126, mesne process; p. 136, false appeals; p. 136, maine; p. 140, year, day and waste; p. 141, pleading.

[3] Below, p. 32, tournaments. Below, p. 132, petty larceny. Below, pp. 35-6, appeals by approvers.

[4] Below, p. 34, sanctuary. This ascription to Henry the Third (the Second?) of a law made at Clarendon touching sanctuary seems to be occasioned by a passage in Bracton, f. 136, which our author misunderstood. See also p. 52.

[7] Below, p. 31, deodands; p. 65, novel disseisin; p. 72, replevin; p. 141, pleading exceptions.

His leading motives

If now we ask for his motives, we had better for a while use the word *motive* in the sense that Richard Wagner has made familiar. No other law-book is so like 'the a'- work of the future.' It is constructed out of a few leading motives, each of which is frequently reintroduced in some new key with more or less ornament and embroidery. We might pick these out and label them as 'the false judge motive,' 'the Hebraic *talion* motive,' and so forth; but any reader will soon see that he can do this for himself, and will find the task amusing. Only of a few main themes shall we here speak.

The religious motive

A strong religious strain runs through his work; indeed the whole book might be marked *Religioso*. Of course in medieval law-book, albeit a book of temporal law, we expec to see courteous words about Holy Church and her jurisdiction, even though some of the extreme claims of the ecclesiastical courts are being strenuously resisted. Nor are we surprised when Bracton in fervent phrases preaches a sermon against the corrupt judge and threatens him with everlasting torments.[1] We have something very different in the *Mirror*, something that we shall hardly find elsewhere, least of all in ecclesiastical law-books, for we shall not go far wrong if we call it Puritanism. There a curious trait of bibliolatry,[2] a tendency to collect precedents out of the Old Testament and to find legal maxim in the ancient laws of the Hebrews, a tendency which the medieval Church very wisely repressed, for it leads to justification of the judicial combat by the precedent *David* v. *Goliath*[3] and an acceptation of 'Eye for eye and tooth for tooth.'[4] But, further, our author chooses to regard every breach of the law as sin. It is of sin that he will write even though this brings him to the flagrant absurdity of a classification of sins as 'real, personal, and mixed.'[5] Religion, morality, law, these are for him

[1] Bracton, ff. 2, 106.
[2] See below, pp. 2, 3.
[3] Below, pp. 77, 109.
[4] Below, pp. 49, 143. Therefore it is that (p. 184) 'imprisonment should only be adjudged where there has been wrongful imprisonment.'
[5] Below, p. 49. Even in application of these adjectives actions he seems to depart wid

one; they are for him law. He knows nothing of the distinction, which any canonist would have taught him, between the *forum externum* and the *forum internum*. Hence his enormous and intolerable extension of the boundaries of larceny[1] and perjury.[2] Whatever is morally as bad as theft is theft, and should be treated as such. Hence also the freedom with which he can give the name of law to some rule directly contrary to that which King Edward's courts are enforcing. What I think right is right; what is right is law; any divergence from the rule of right is an 'abuse' of the law, even though courts and legislators may be guilty of it.

The author no cleric

'What we find is religiosity real or assumed; it is not ecclesiasticism or sacerdotalism, it is not high-churchmanship. The distinction that is here indicated by terms that may not be very apt is none the less one on which we must insist. In the thirteenth century there were quarrels enough between Church and State, quarrels about matters which any writer of a legal text-book would have to mention: for example, about the privilege of sanctuary and the benefit of clergy and the writ of prohibition. Now it will seem to us that with these matters the *Mirror* deals pretty fairly.[3] It does not violently champion the cause of either party.[4] It holds that the Great Charter and the Statute of 1275 are defective in not providing a punishment for justices who are remiss in delivering accused clerks to their ordinaries, or who poach in the ecclesiastical courts.[5] On the other hand, I cannot think that the following sentence came from one who was an ecclesiastic or an ecclesiastically-minded man:—'It was forbidden [among the fundamental laws of the realm] that any bishop should ordain as clerks more laymen than are necessary to serve the churches, so that the king's jurisdiction may not be decreased or diminished.'[6] And again:—'The

from the traditional English use of words. He would make all turn on mesne process, but of mesne process he has theories that are all his own.

[1] Below, pp. 25–28.

[2] Below, pp. 16–19.

[3] The passage about sanctuary, p. 34, seems to fall short of the demands of the clergy. See also Abuse 22 (p. 157).

[4] Below, pp. 92–3.

[5] Below, pp. 176, 185.

[6] Below, p. 14, and Abuse 109 (p. 171).

articles [in *Circumspecte Agatis*] which would compel parishioners to enclose churchyards, to make oblations, to give mortuaries, to pay money for confessions, or for the blessed bread, for roofing the churches, for chalices, lights, holy vestments or other ornaments of the churches, are founded rather on covetousness than on the amendment of souls, since the parsons of the churches are to be apprehended in this respect, not the parishioners, and are to be charged for these things to the extent of one-third of their tithes.'[1] This surely is the work of a layman. We seem to hear in advance the voice of the modern Nonconformist who objects to compulsory church-rates and relies on 'the tripartite division of tithes.' It comes from a man who, despite Pope and General Council, would like to see 'the judgment of God' re-established among us.[2]

Distinctive religiosity

Let it not be supposed that this obtrusive religiosity is a common feature of medieval law-books. It is nothing of the kind; it is a very distinctive feature of this book. No doubt in sound and practical treatises we may find religious reflexions, references to Holy Writ, and now and again some fragments of dogmatic theology. But it was no more the fashion in the middle ages than it is the fashion nowadays for a lawyer or for anyone else to speak habitually as if law and law-courts and parliaments existed for the purpose of saving the souls of sinners.[3] Not every book typical of the age in which it was produced. Every age has had its prophets, its eccentrics, and its paradoxers.

Is the religiosity genuine?

Now the Puritanism, the edificatory design, the unctuous language, may be unaffected. On the other hand, all this may be cant; or, again, it may be a convenient artistic

[1] Below, p. 199. See also Abuse 110 (p. 171): clerks who have abandoned the world ought not to hold lay fee. The word *clerks* seems to show that this is aimed, not at the monks, but at the secular clergy. If so, this is Puritanism. See also p. 183: 'A clerk has no more right to sin with impunity than has a layman.' A staunch upholder of ecclesiastical privileges would have said that this last sentence hovered between truism and heresy.

[2] Below, p. 110, and Abuse 127.

[3] See *e.g.* p. 49, where an appellor desires to drive the appellee to salvation, and p. 59, where the king is bound by his office to chasten sinners to salvation, and p. 155, where parliaments are to be held twice a year for the salvation of the souls of sinners.

drapery. By assuming the garb of the preacher, and boasting his familiarity with inspired books, this writer may be forging a title to lay down for law whatever rules he would like to enforce, and to tell tales that are not easily credible. So let us be upon our guard.

The canonical motive

Then we may see a tendency to dabble in the Canon Law, and yet may be sure that our author is not an instructed canonist. He probably could command a copy of the *Decretum*. His queer account of divination takes us back ultimately, if not directly, to a passage of St. Augustin that Gratian has excerpted.[1] From the same source he has obtained a proof that homicide can be committed by word as well as by deed: a proof which, in passing, seeks to explain the apparently discrepant statements as to the hour of Christ's death that are contained in the Gospels.[2] Once he cites 'the canon itself' as to the position of serfs who have been ordained, a topic about which there is much to be found in the *Decretum* and the *Decretales Gregorii*.[3] From some canonical text-book he has borrowed the classical definition of affinity; but this he could come by easily.[4] It is not impossible that the title of his book was suggested to him by the work of William Durant, the celebrated *Speculum Iudiciale*, which soon earned for its author his well-known title 'Speculator.' The first edition of this book was, we are told, compiled before 1276, the second before 1287,[5] and it very soon won a foremost place in the libraries of all practising canonists. On the other hand, it is possible that our author, who, like Andrew Horn,[6] believed that the English were Saxons,[7] and could talk about the law of Germany,[8] had heard the name of a famous German law-book, the Saxon Mirror (*Sachsenspiegel*) of Eike von Repgau,[9] and it is a curious coincidence that German historians are now telling us that Eike's

[1] See below, p. 16.
[2] See below, p. 23.
[3] See below, p. 78.
[4] See below, p. 21.
[5] Schulte, *Geschichte des canonischen Rechts*, ii. 149.
[6] See above, p. xviii.
[7] Below, p. 6.
[8] Below, p. 46.
[9] The date of this book is not very certain. Schröder, *Deutsche Rechtsgeschichte*, p. 622, places it between 1215 and 1235.

statements of law bear a markedly 'subjective character,' or, in other words, do not accurately represent the actual practice of the courts of his own day. There is a faint resemblance between the beginning of our *Mirror* and the beginning of the *Sachsenspiegel*, and our author might well have called his book *Speculum Saxonicum*, so positive is he that all that is English is Saxon.[1] However, the word 'Mirror' lay ready to the hand of anyone who desired a title for a manual of theology, law, or any other science.

The author no canonist

But, to return from a digression, we shall not easily believe that our author is an expert in the law of the Church. Had he been this, he would assuredly have shown us his hand by some scientific citation. Your professional canonist would hardly have admitted that the sun shone at noonday without sending you to Gratian for the proof, and would never have written pages about law without one *ut Extra*. Besides, the ideas which attract our English Speculator in the books at which he glances are the mere curiosities. He is pleased with the notion that the Almighty made Moses a doctor[2]—*utriusque iuris*, we suppose—and that Christ 'sat in his consistory' to judge the woman taken in adultery.[3] Augustin's detailed account of heathen magic strikes his eye,[4] and so does that apology for the seeming variance between evangelists which is also a lesson in the law of homicide.[5] He is fascinated by the idea of heresy as *crimen laesae maiestatis divinae*,[6] and though there are no heretics in England, or none worth persecuting, he likes to imagine an 'appeal' of heresy; it would be a picturesque event;[7] almost as pic-

[1] Compare the prologue *Dieu tout puissant* of the *Mirror* with the prologue *Got die dar is begin unde ende aller dinge* of the *Spiegel*. The prologue done, the Englishman describes the division of England among forty Saxon counts; the German sets forth the titles of the Saxon nobles, though this account of them does not, it is said, belong to the first edition of his work. In suggesting that the author of the *Mirror* may have glanced at the *Spiegel*, we are not of necessity attributing to him a knowledge of the German tongue, for we are told that Eike wrote his work in Latin before he produced the German version that has come down to us.

[2] Below, pp. 5, 123.

[3] Below, pp. 43–4.

[4] Below, p. 16.

[5] Below, p. 23.

[6] Below, p. 15.

[7] Below, pp. 59, 60.

turesque as the indictment of Nolling for a sacrifice to Mahomet.[1] But of the strict scholastic method, the laborious logic that he would have learnt in a school of canon law, there is no trace. Here, as elsewhere, we see the amateur. He has caught hold of some doctrines of *infamia*[2] and of 'notoriety,'[3] and of the various kinds of ignorance which Bracton had wisely left on one side. He would like to be taken for a well-read decretist; but really his canonical lore seems to be of the kind that an outsider would pick up pretty easily if he haunted the consistories and now and then glanced at a handbook. The confusion between 'capital crimes' and 'mortal sins,' the talk of 'mortal actions' and 'venial actions,' of 'real, personal, and mixed sins,' the attempt to force upon our temporal law the distinction between 'notoriety in fact,' and 'notoriety in law,' the attempt to represent the suitors in the local courts as 'judges ordinary': all this, if it be not a display of mere ineptitude, is a display of a perverse originality which amuses itself by playing havoc among technical terms. And at this point we remember that Dr. Stubbs, without mentioning the *Mirror*, threw out the suggestion that Andrew Horn may at one time have held 'some office in connexion with the Court of Arches.' The Canon Law of this book looks like the Canon Law of some aspiring usher, who adorns his conversation with the cast-off phrases of those learned doctors to whose discourses he is compelled to listen.

Roman Law in the *Mirror*

So with his Roman Law. Almost all the Romanesque racks in his book, and they are many, lead us in the first instance to Bracton, with whose work he certainly was familiar. Indeed, but one passage has caught my eye in which he distinctly betrays a knowledge of a Roman text that he could not have obtained from Bracton. This is the definition of theft. Let us compare the three following passages:—

> Institut. 4. 1. 1. Furtum est contrectatio rei fraudulosa vel ipsius rei vel etiam usus eius possessionisve.

[1] Below, p. 60. [2] Below, p. 133. [3] Below, p. 122.

Bracton, f. 150 b [Fleta, p. 54]: Furtum est secundum leges contrectatio rei alienae fraudulenta cum animo furandi invito illo domino cuius res illa fuerit.

Mirror, p. 25: Larcin est prise dautri moeble corporel trecherousement contre la volunte celi a qi il est pur male gaigne de la possession ou del us.

It seems fairly clear that the compiler of the *Mirror* combines Bracton with the Institutes. He restores the *usus eius possessionisve*, which Bracton had advisedly suppressed, and yet retains Bracton's *invito domino*. However, this one instance would be an insufficient cause for allowing him even a copy of the Institutes. The classical definition of *furtum* he might find in many places. And so when he talks nonsense (for nonsense it is, if he is describing the English law of his own day) about the double damages paid for theft and the fourfold paid for robbery,[1] we gather that he has heard just enough of Roman law to make this rubbish possible. But of any study of the Roman books we can see no evidence, while it is almost incredible that he had ever been through a school of professional legists.[2]

The imperialist motive

And yet he is the man who writes what may in one sense be called the most Romanistic passage that is to be found in any English book. Not only as a matter of general theory does he attribute force to 'the written law'[3] and place the Emperor on a level with the Pope and above all kings[4]—Bracton, with Azo's work before him, had been careful to exclude imperial pretensions[5]—but he has the sublime impudence to say that a chapter of an English statute, which he particularly dislikes, is void because it has not received the sanction of Pope or Emperor.[6] This doctrine of imperial supremacy he may have heard from a civilian or from a German merchant. Had it gained a foothold in England a 'reception' of Roman law would have been imminent. But we have here only a dream,

[1] Below, p. 150.

[2] The talk about homicide committed by negligent physicians (below, p. 137) is not due to Bracton, and some phrases in it remind us of Instit. 4. 3. §§ 6. 7.

[3] Below, p. 5.

[4] Below, p. 123.

[5] Bracton, f. 5 b, 107.

[6] Below, p. 195.

and one that came through the ivory gate. The orthodox English doctrine, among men who cared to have any doctrine at all about so obvious a matter, was that the king of England was within his realm an emperor *vel quasi*.[1]

The *Mirror* and English law-books

It seems plain that this man has Bracton at his elbow. There are in his book passages that might have been borrowed from Fleta or from Britton. But I think it clear that he has gone to the fountain-head. We will take for example his academic discourse on homicide and the kinds thereof. The very practical Britton has no such discourse. Fleta has abridged that which he found in Bracton, who in his turn had borrowed from Bernard of Pavia.

> *Mirror*, p. 22: Homicide est occision de homme par homme fete. *Car si par beste ou mescheaunce adunc nest pas homicide.* Cest pecchie chiet en ij. maneres: par langue e par fete. Par langue en iij. maneres: par conseil, comandement e defense.
>
> Fleta, p. 33: Homicidium est hominis occisio ab homine nequiter facta. et potest quis corporaliter occidi facto et lingua: facto,—iustitia, necessitate, casu et voluntate; lingua,—praecepto, consilio, defensione.
>
> Bracton, f. 120 b: Et est homicidium hominis occisio ab homine facta, *si enim a bove, cane vel alia re non dicetur proprie homicidium.* . . . Species homicidii sunt plures. . . . lingua vel facto. Lingua, tribus modis. . . .
>
> Bernardus Papiensis: Homicidium est hominis occisio ab homine vel ab hominibus facta, nam et si quatuor vel plures homines aliquem vulneraverint et ipse inde mortuus fuerit omnes qui eum vulneraverint homicidae reputantur . . . Species homicidii plures sunt . . .

The remark that, if a man is killed by a beast, this is not homicide, is common to the *Mirror* and Bracton; it does not come from Bernard; it is not received by Fleta.[2]

[1] See Rishanger, *Chronica et Annales* (Rolls Ser.), p. 255: 'quia hic censetur Imperator.'

[2] In a forthcoming book Bracton's text will be compared with Bernard's.

Was Britton used?

That Britton as well as Bracton was used is possible, but cannot, so it seems to me, be proved. The most striking coincidence is the following. Britton has told a tale about one Robert Walerand, who was a prominent justice and a royal favourite in the last days of Henry III.[1] As I understand Britton's words, they mean that to Robert Walerand was due an ordinance which gave the king the wardship of the lands of all born fools. We find the same story in the *Mirror*.[2] However, Walerand was a distinguished man, and the story has its point in the well-attested fact that his own heir was an idiot,[3] so that his connexion with the ordinance would be easily remembered, and we need not be surprised if it is mentioned a few years after his death by two independent writers. The author of the *Mirror* will mix some true tales with his fables.

The *Mirror* and Bracton

It is difficult to say what English law-books he has or what he has not used, for he borrows nothing without distorting it. His procedure may be illustrated by what he writes about the crime of mayhem. He seems to have Bracton's account of the law before him, but he adorns it by attributing certain dicta to three ancient judges whom he calls Turgis, Senwel, and Billing.[4] Whether this is the same Billing that King Alfred hanged he does not tell us, and the question is unanswerable, for Billing is the creature of his brain. He is borrowing from Bracton, and concealing the enforced loan by romance.

Suppression of Bracton's name

When once we have been persuaded that our author has been studying Bracton's book, our estimate of his knowledge of law of any sort or kind, whether Roman, Canon, or English, will not be very high. 'Action nest autre chose qe loiale demande de son droit';[5] this we say comes from the Institutes until we see that Bracton has already borrowed it.[6] As to English law, it seems to me that when the *Mirror* makes any statement that is sober and verifiable and yet is a statement that goes beyond that

[1] Britton, i. 243.
[2] Below, p. 138.
[3] *Engl. Hist. Rev.* vi. 309.
[4] Below, p. 21. Compare Bracton, f. 145.
[5] Below, p. 13.
[6] Bracton, f. 98 b.

sort of knowledge which every layman may have of the law of his own time, the source of that statement is Bracton. That Bracton's name should nowhere occur in the book (though Bracton's hero, Martin of Pateshull, is mentioned [1]), that is exactly what we might expect. The man who professed to have read records that never existed was the very man to conceal the name of the writer from whom he learnt almost all that he knew.

Wilful mis-statements of law

That he deliberately stated as law what he knew was not law, if by law we mean the settled doctrines of the king's court, will be sufficiently obvious to anyone who knows anything of the plea rolls of the thirteenth century. If at the present day a man wrote a law-book and said in it, 'Law forbids that murderers should be hanged; estates tail cannot be barred; bills of exchange are not negotiable instruments,' he would be guilty of no extravagance for which a parallel might not be found in the *Mirror*. Let us take for example the following sentence: 'The law also forbids that anyone should lease or take to farm land, or fee, or possession for any term of years beyond the term of forty years, and that any contracts should be made for a perpetual fee farm, or for any term at a higher rent than the fourth part of the annual value, and that any woman should be endowed of the advowson of a church.' [2] One word is wanted to make this true; the word 'not.' Our author knows that as well as we know it. Let us take another example. 'If rent, suit, or other service due to any lord from his fee be in arrear, the tenant is not to be distrained by his movable goods.' [3] This statement was as false in Edward I.'s time, as obviously and notoriously false, as it would be if it were written nowadays. But the author has a feudal fad; instead of distress he wants to see proceedings taken by the lord in his seignorial court. A quantitative analysis of his work which would accurately distinguish all that is true from all that is false we can hardly make. We are naturally unwilling to contradict

[1] Below, p. 147. [2] Below, p. 75; see also p. 164.
[3] Below, p. 129; see also p. 175.

flatly a man of a remote age who talks to us about the law of his own time, and so this man has been able to trade upon our diffidence and ignorance. But, when once we know his character, we shall begin to suspect that those passages in his book which successfully stand a comparison with plea rolls and honest treatises are the most deceptive, having been designed for the very purpose of inducing us to swallow the fables that lurk amongst them.

Absence of lawyerly interest

For this reason it is hard for us to estimate the extent of his legal knowledge. He is wilfully and of set purpose misplacing his 'nots.' But of a lawyerly interest in law we see very few signs. He does not love to argue, as Bracton loves to argue. He takes no delight in a nice case or a moot point. When we do get from him anything that by courtesy could be called a legal argument, it is fantastic or it is puerile,[1] and this we say judging it, not by any standard of our own day, but by the standard set by Glanvill and Bracton, by Britton and Hengham.

The parliamentary motive

His political theory is simple. He is strongly opposed to an unfettered monarchy and to a king who is above the law. But his ideal of the body which is, or ought to be, a check upon the king, is quaint and impracticable. He first puts it before us in the guise of ancient history. We must go back to 'the coming of the English.' Further back than that we need not go. He is as ardent a Teutonist as was the late Mr. Freeman; more ardent, for of the Norman Conquest he says no word. Of British, of Scandinavian, of French elements in our history, he will know nothing. The very name of William he ignores. And yet how came he to be writing in French of English law? He can, indeed, allude to the times of King Arthur,[2] but, at all events for political purposes, 'the coming of the English' gives us the requisite *tabula rasa*. God abated the pride of the Britons, and handed over the land to those 'humble and simple' Saxons who came from the parts of Almain. These Saxons had forty sovereigns, who in course

[1] See *e.g.* p. 162 (Abuse 73). See also the marvellous mistake about *realiter* on p. 190.

[2] Below, p. 3.

of time chose a king to reign over them. Then the kingship became hereditary, and the forty princes became the king's *comites* or counts. Each of them governed a county.[1] A parliament of counts or earls meeting twice a year in London,[2] which aids the king in governing the people and hears all causes in which the king is defendant,[3] seems to be our author's political ideal:[4] a curiously oligarchic and aristocratic ideal. Even of the barons we read very little, while the prelates seem to have nothing to do with temporal affairs. Of the representation of shires and boroughs we have no syllable; no syllable of the right of the community of the land to take part in legislation or even in taxation. The ideal is a belated ideal even in the days of Edward I.; indeed, we may doubt whether at any time a council of forty earls ever stood in the political programme of any English party. But then we do not know that our author is serious. Is it not all a dream?

The equalitarian motive

He shows some curious leanings towards liberty and equality, an intense and a very unmercantile dislike of imprisonment, more especially imprisonment for debt;[5] a tendency to argue that the lord owes just as much to his man as the man owes to his lord; a desire to give the bailiff just the same remedy against the master that the master has against the bailiff. He holds that the villains are being unjustly treated. For all this, however, he is neither demagogue nor socialist. The feudal arrangement of society is for him a sacred, primeval, unalterable arrangement. He does not denounce it as modern or alien. It was established here immediately after 'the coming of the English.' Knights' fees and wardship in chivalry and seignorial justice were among the first institutions of 'our holy predecessors.' He is decidedly opposed to that free alienation of land for which Bracton argued warmly. Indeed, at many points he appears as a stricter feudist

[1] Below, pp. 6–8.
[2] Below, pp. 8, 155.
[3] Below, p. 7.
[4] Below, p. 36. King John legislates with the assent of the earls.
[5] Below, p. 164 (Abuse 81); p. 179 (c. 29); p. 184: 'imprisonment should only be adjudged in case of wrongful imprisonment.'

than Bracton was. He has exceedingly severe notions concerning fealty and homage; the tenant may easily forfeit the land, the lord may easily forfeit the seignory.

Absence of civic pretensions

With Andrew Horn, fishmonger and citizen, in our minds, we naturally are on the outlook for any phrase which may exalt the City of London or magnify civic privileges or civic pretensions. Especially will this be so if we remember that Horn possessed and annotated a copy of what I have called Dr. Liebermann's London law-book, a book whose compiler was ever tampering with his texts in order that he might advocate some claim dear to the hearts of London citizens. But, if I am not mistaken, there is only one matter about which the author of the *Mirror* speaks in the municipal key. That is the residence of aliens within the realm. He holds that a foreigner should not be suffered to dwell here for more than forty days without being put in frankpledge.[1] A claim of this sort is a distinctively urban or municipal claim, and is urged in the London law-book at the expense of historic truth.[2] On the other hand, we may find in the *Mirror* a passage which, if written by a London citizen, is either marvellously impartial or marvellously well devised for the purpose of throwing hunters off the trail. It is explained to us that the ancient liberties which are guaranteed to the City of London by the Great Charter are only such liberties as have been lawfully granted and confirmed by the kings and have not been forfeited by abuse. Also we are told that no distinction in this respect is to be drawn between London and other places.[3] Not a word of Troy, but a confession that Londoners hold their franchises by royal grant and may forfeit them, and then a confession that the great city is at most *prima inter pares*. Our author does not like franchises, whether seignorial or municipal. Franchises are inequalities, and he is for equality.

No mercantile motive

Again, we can catch no specifically mercantile strain, no enhancement of the law merchant at the expense of the

[1] Liebermann, *Leges Anglorum*, p. 13.
[2] Below, p. 156 (Abuse 6); p. 180 (c. 30).
[3] Below, p. 177.

common law. On the contrary, our compiler has a marked hatred for King Edward's 'new' mercantile statute.[1] It allows imprisonment for debt. So doing, it infringes the law of nature and the law of God. It must be confessed that if this book comes from a London citizen and a wealthy fishmonger, he has allowed his own private theories and fancies to override the interested opinions and prejudices of the class to which he belongs, or else—for we must take nothing for granted—knows how to perplex his readers.

Treatment of the magnates.

But we wrong the man if we wish to make him the representative of a class. He stands, for the sake of art or of mystery, outside all classes, and is not going to tell us whether he is hallowed or lay, gentle or simple, free or bond, from town or from country. If one of his 'motives' would suggest one inference about such matters, he will be careful to suggest another inference by another motive. His political scheme of a parliament of earls and his attacks on royal officers might induce us to call him a member of an oligarchic and feudal party. But he has assaulted the dearest interests of that party with an energy that a law officer of the Crown might envy. In the first half of Edward I.'s reign one of the most flagrant disputes between the king and any class of his subjects was that which related to the 'franchises' of the magnates. The royal doctrine was that franchises could not be claimed by prescription, while many of the prelates and barons could show no other title for those jurisdictional privileges which they exercised. In the end the king had to give way. In 1290 he conceded that a seisin continued from the reign of Richard I. might be pleaded in reply to a *quo warranto*. Now, about this warmly controverted matter, we may find in the *Mirror* a doctrine which an attorney-general could have subscribed. To the full it sanctions the extremest claims that had been put forward in the name of kingly prerogative. The man who attempts to prescribe for a

[1] Below, p. 164 (Abuse 81); p. 179 (c. 29); p. 199.

franchise does but aggravate his offence by asserting that he is an old offender.[1] Shall we say, then, that our author is a royalist pamphleteer? Far from it. Let the nobles wait; their turn will come, for 'it is an abuse that a tenant can without punishment enfeoff a third person in the fee of his lord to his lord's prejudice.'[2] This is a handsome concession to the great folk at a time when *Quia emptores* is imminent; and, though the franchises are attacked, the seignorial jurisdiction of the court baron which is exercised by the suitors as 'judges ordinary' is warmly defended against the new-fangled writs which encroach upon its domain.[3]

The author's disinterestedness

Is not this man a little too disinterested? Have we not a little too much difficulty in assigning the class to which he belongs? Have we not here the disinterestedness of the smart young man who is amusing himself and laughing in his sleeve? Having told us how Nolling was indicted for a sacrifice to Mahomet, he may be allowed the licence of the artist. The man who about the year 1289 says that there can be no prescription for franchises, and yet that the lord's consent is necessary if a tenant wishes to make a feoffment, is giving his opinion on two burning questions. One he decides against the nobles, the other in their favour. In each case his opinion is that which the statute roll is going to reject. Such a man is a representative, not of the spirit of the age, but of a disinterested spirit, the spirit of contradiction.[4]

Treatment of the villains

Of late years the passages in the *Mirror* which have attracted most attention are those which speak of villainage. The author warmly protests that according to law villains and serfs are not all one, that the villains are free men and are or ought to be protected in their holdings by the assize of novel disseisin.[5] This no doubt is worthy of remark,

[1] Below, pp. 113, 147.

[2] Abuse 151 (p. 175); p. 181 (c. 32).

[3] Below, p. 179 (c. 24); p. 182; p. 191 (c. 7).

[4] The Statute *Quia Emptores* and the Statute of *Quo Warranto* both come from the year 1290, and from what seems to have been considered one and the same parliament. See Statutes, i. 106–7.

[5] Below, pp. 79, 81, 162, 165, 177, 191.

and it may fairly be used, as it has been used, by way of argument to prove that the legal theory of villainage which we find, not merely in the text-books, but in the records of the king's court, ran counter to older doctrines which would have kept the *servi* and the *villani* apart from each other.[1] At the same time we must observe that the author's heresy about villainage is closely connected with other heresies which can hardly have any traditional basis. If it is an 'abuse' to deny the assize of novel disseisin to the tenant in villainage, it is also an 'abuse' to deny the same assize to the ejected tenant for term of years, and it is also an 'abuse' to hold that this assize does not protect the seisin of advowsons.[2] The plea in favour of the villains loses some, though not all, of its force when we find it mixed up with these crotchets.

Reactionary motives

Our author would not be angry, he would be pleased, if we called him a 'reactionary' or a 'retrogressist.' Like most of his contemporaries he believes rather in the good old time than in the good time coming, and it is his cue to restore to pristine purity those 'usages' of 'our holy predecessors' which have been 'turned to abuse.' But his list of abuses is a strange medley. As to a few of them we may say with some certainty that if King Edward's justices and officers were guilty of the practices that are denounced, they were knowingly breaking the law. That in and about 1289 there were in high place men who were quite capable of knowingly breaking the law we may learn but too easily from sources incomparably more trustworthy than the *Mirror*. But then these few 'abuses' are mixed up with many other 'abuses' which really are the newer developments of the common law. The man who calls them 'abuses' wants (or makes believe that he wants) to see the stream of law flowing backwards. Of any really remote time, even of the twelfth century, he does not know enough to enable him to demand the revival of many archaisms. But Bracton's book and living tradition teach him that

[1] Vinogradoff, *Villainage in England*, pp. 415–421.
[2] Below, pp. 67, 68, 162, 164, 194.

certain doctrines and practices are novelties. In a good many instances the 'abuse' would disappear if the law of 1200 or even of 1250 could be restored. Let us cite a few which seem to belong to this class.

4. It is an abuse that force may be used in disseisins after the third day of peaceable seisin.

9. It is an abuse that there are so many forms of pleadable writs.

13. It is an abuse that treason is not more commonly attainted by appeals.

19. It is an abuse that justices drive a lawful man to put himself upon his country when he offers to defend himself by his body.

50. It is an abuse that men can alienate more than a quarter of their inheritances away from their heirs.

56. It is an abuse to make a man answer to the king's suit when he is not indicted or appealed.

85. It is an abuse to outlaw a man for a default when the original cause of the proceedings against him is not a felony.

117. It is an abuse that rape is a mortal sin.

124. It is an abuse that anyone should be bound to render an account of the profits of land whereof he is guardian by lawful title.

126. It is an abuse that there is no trial by battle in personal actions as there is in case of felony.

127. It is an abuse that proofs and purgations are not made by the miracle of God when no other proof can be had.

Abuses new and old.

Now in these and some other cases the rules or institutions that are struck at seem to be novelties, and if by an 'abuse' the author merely meant that they were novelties to which he objected, he was free to use that word. And of course it is still open to question in our own day whether some of these innovations were wisely made: whether, for example, a little more courage might not have avoided the multiplication of new writs; whether there was any need for the criminal information which is neither appeal nor indictment; whether outlawry should not have been con-

fined to cases of felony; and so forth. Our author's voice is (we are happy to say it) the one and only English voice that we have heard pleading for a restoration of 'the miracle of God.' Still he is here pleading for the old against the new, and the so-called 'abuse' is more or less of a novelty; some yet living men may in their earliest childhood have seen an ordeal. If in these last years of the nineteenth century a man said, 'It is an abuse that fines and recoveries are not permitted; it is an abuse that the *peine forte et dure* is not inflicted; it is an abuse that *choses in action* are assignable,' we might call him a lunatic, but still should have to credit him with some knowledge of legal history. However, many of the Speculator's 'abuses' are not even novelties. Let us take this for example:—'It is an abuse to suppose that terms of years and presentments to churches cannot be recovered by the assize of novel disseisin.'[1] Now, without daring to say that never in any single instance had a term of years or the presentment of a church been recovered by this assize (accidents will happen even in courts of justice), we can, now that we have in print many excerpts from the oldest plea rolls, say with some confidence that the doctrine that is here reprobated as an abuse is as old as the novel disseisin itself. But, further, the practice on which the lash of 'reprehension' falls is sometimes no novelty; it is an almost obsolete archaism that is lurking, if anywhere, in the local courts. Thus: 'It is an abuse to allow voucher to warranty in larceny or in any other personal action.'[2] If this voucher in the 'action of theft' is being allowed in Edward I.'s day, we have here no new-fangled rule, but one of the most ancient traits of primitive Germanic law. In truth, no serious attempt is being made to separate the old from the new, and to restore the law of a past time. This manufacturer of 'abuses' knew so little of any history that such an attempt, had he made it, would not have prospered in his hands. But he is not making it. He is enjoying himself.

[1] Abuse 76 (p. 164). [2] Abuse 106 (p. 166).

Pedantry of the *Mirror*

When we have to deal with some anonymous and impersonal book we gladly catch at any sentence which seems to reveal by chance some little of the author's life, and sometimes, perhaps, we rear too lofty an edifice of conjectural biography upon a very slight foundation. In the present case we are scarcely tempted to any such constructive feat. The indications are too many and too contradictory. And so we are not going to say that this book comes from one of the oppressed villains, or from one who has lain in prison for debt, or from one whose favourite crime was rape. But perhaps we shall say that it comes from one whose opinions, or professed opinions, are the sport of small philological or biblical pedantries; who would oblige a lord to find maintenance for every serf, since *servi* are derived *a servando*;[1] who holds that imprisonment should never be inflicted except as a punishment for false imprisonment, because the Mosaic law demands strict retaliation;[2] who prides himself on knowing that the crime that in English law is called rape (Lat. *rapum*) is not exactly the *raptus* of the Canon law.[3] His book is an impersonal book, not because it is scientific, nor because he is modest, but because he is fantastic and irresponsible.

The attack on the judges

Howbeit, the strain that dominates the whole book is the dislike of the king's officers and their ways. Corrupt are they and become abominable in their doings; there is none that doeth good, no not one. From the chancellor and the false judges downwards, they are all guilty of offences, which, to give them their plain names, are perjury, larceny, and murder. If King Alfred came back among us he would hang such folk by the score. The system of government is as bad as those who administer it. What our author seems to detest most is any rule that puts the king or any of his subordinates outside the ordinary course of common justice. Writs should run against the king himself. The punishments that have been denounced of late against official oppressions are

[1] Below, p. 78; Abuse 89 (p. 165).
[2] Below, p. 184.
[3] Below, pp. 28-29.

inadequate; those who are guilty of them are simply perjurers and larceners, and should be treated as such. May we not guess that here, if anywhere, our author is really in earnest, and that a good deal of the rest of his book is but a cloud in which he wraps up his dangerous opinions—opinions, I mean, that may bring him into danger? The man who wants to revive the ordeal, the man who holds that the emperor's consent is necessary if rape is to be made a capital crime, can always laugh at you if you take his words literally. May we not dream and tell our dreams?

The scandal of 1289

The dream that the king of old time could be sued in his own court is a dream that is becoming popular. It is becoming an article of faith among those who have complaints against the king for the time being. Here, more definitely than anywhere else, we can connect the *Mirror* with a political programme that many will accept.[1] Again, if we suppose that the book was written about the year 1289, the talk of 'false judges,' the hints that the chancery and the exchequer are full of perjurers and thieves, are not without point and truth. It was the time of the great scandal, the time of Solomon of Rochester and Thomas Weyland, the time of Adam of Stratton, the time when Edward appointed commissioners to try his judges, and even a Hengham hardly escaped with untarnished fame.[2] Even here, however, our friend is not going to speak out in simple and straightforward words. He will imply and he will allude. He will not talk of Stratton and Weyland; he will talk of Billing and Watling. He will mix up real grievances with fables and falsehoods and views and visions. He will carp at Edward's reforming statutes,

[1] Pollock and Maitland, *Hist. Engl. Law*, i. 500.

[2] The Records relating to this scandal deserve to be printed. It is mentioned by many chroniclers. See *French Chronicle of London* (Camd. Soc.), p. 22; *Continuator of Florence of Worcester* (Eng. Hist. Soc.), ii. 240; *Rishanger* (Rolls Ser.), 118; *Ann. Waverley*, 408; *Ann. Dunstable*, 355; *Thomas Wykes*, 319; *Ann. Worcester*, 499; *Barth. Cotton*, p. 171; *Nic. Trivet* (Eng. Hist. Soc.), 316. See also *Parliamentary Writs* (ed. Palgrave), vol. i. Chron. Abstr. 14; Stubbs, *Const. Hist.* ii. 120.

urging now some pedantic trifle and now some flighty fancy. It is the oddest jumble. At one moment we seem to hear the voice of Bentham, when codification is demanded,[1] and at the next moment we are back among inalienable fiefs. All is wrong; yes, all.

Summary

What, then, shall we say of this book? and what shall we call its author? Is he lawyer, antiquary, preacher, agitator, pedant, faddist, lunatic, romancer, liar? A little of all, perhaps, but the romancer seems to predominate. He would like that some of his tales should be believed. He hopes, as other romancers have hoped, to edify as well as to amuse his readers. But he is careful not to tell us when he is in earnest and when he is at play. So to do would not merely be an inartistic blunder: it might end in his being taken but too seriously. He is making an attack on powerful persons, on the king's justices and officers. He is hinting that the royal court is a den of thieves. It is well for him that, if called to account for his words, he can say that he was but telling stories of Alfred and Arthur, and ask you whether you cannot see a joke. That is what makes his work so puzzling to us nowadays. We guess that he wanted his readers to believe some things that he said. We can hardly suppose him hoping that they would believe all. We feel sure that in Paradise, or wherever else he may be, he was pleasantly surprised when Coke repeated his fictions as gospel truth, and erudite men spoke of him in the same breath with Glanvill and Bracton. And yet we cannot say with any certainty when he intends to deceive, when to instruct, when to divert. That is just what he wished. He has puzzled us, and will puzzle us until we know much more than we know as yet of the times in which he lived. It is a variegated, tessellated book, this book of his: *Dichtung und Wahrheit*—or shall we adopt Ihering's *Scherz und Ernst in der Jurisprudenz*? But why borrow from Germany? Perhaps (but even of this we

[1] Abuse 3 (p. 156): 'It is an abuse that the laws and usages of the realm, with the reasons for them (*lur enchesons*), are not put in writing, so that they might be known to all.

cannot be sure) we have his own description of his own work: it is Ivory and Horn.

A theory of the book

To elaborate a theory as to the origin of such a book would be hazardous; but we have seen how two lines of investigation seem to converge. In order to discover the date of its composition we ask what statutes are, and what are not, noticed in it, and we are thus led to the years between 1285 and 1290. Then we see that its main and ever-recurring theme is a denunciation of 'false judges,' and we call to mind the shameful events of 1289. The truth was bad enough; no doubt it was made far worse by suspicions and rumours. Wherever Englishmen met they were talking of 'false judges' and the punishment that awaited them. All confidence in the official oracles of the law had vanished. Any man's word about the law might be believed if he spoke in the tones of a prophet or apostle. Was not there an opening here for a fanciful young man ambitious of literary fame? Was not this an occasion for a squib, a skit, a 'topical' medley, a 'variety entertainment,' blended of truth and falsehood, in which Bracton's staid jurisprudence should be mingled with freaks and crotchets and myths and marvels, and decorated with queer tags of out-of-the-way learning picked up in the consistories? While the 'false judges' were being soundly lashed, and the gallows was being erected within their view, many other classes of men, especially those which were privileged, could be made to feel uncomfortable by attacks on their interests and their cherished beliefs. Then over the whole a solemn veil of religiosity could be thrown, and startled readers might be assured that all that was written in this book was sanctioned by holy writ and 'the usages of our holy predecessors.' This, no doubt, is guess-work. It is very possible that some reader more learned or more acute than the writer of these lines will discover some serious purpose, some practical scheme of reform, running through the *Mirror*; I have looked for it and have not found it.

And what of Master Andrew, the Chamberlain? Did

Arguments for Horn's authorship

he write this book? Let us sum up the evidence which points to him as its author. In the first place, we have those five verses. They are obscure enough; but one plausible interpretation of them is, that by contrasting Ivory and Horn they half reveal, while they half conceal, the author's name. In the second place, we trace the only known copy of the book into Andrew's possession, and have reason to believe that this copy was made for him and under his eye. Thirdly, we find in his possession another book, a law-book stuffed with fables, which may well have suggested the compilation of the yet more fabulous *Mirror*. Fourthly, we learn that he regarded these two books as forming part of a grand collection of materials which were to serve as a *Corpus Iuris Anglicani*. Lastly, we may attribute to Horn, as well as to the composer of the *Mirror*, a tendency to trifle with Canon law; also a tendency to speak of English law as Saxon, and to listen to what Germans tell of Germany, the old home of the Saxons.

Arguments against Horn's authorship

On the other hand, we have some scruple in attributing this fantasia to the patient archivist of the Gildhall, who filled volume after volume with trusty transcripts of genuine documents, or to the chronicler who left behind him those creditable London Annals. The Statute of Westminster the Second, which in the *Mirror* becomes a target for cavil and reprobation, was for the civic Chamberlain *peroptimum statutum*. That some thirty or forty years after the book was written an honest antiquary should treat it as sound historical material would not surprise us. In the middle ages the clumsiest forgers deceived the gravest critics, and we have seen how Horn treasured and annotated a copy of another law-book which, though much less mythical than the *Mirror*, contained many a purposeful falsehood. Again, Horn did not die until 1328, while the *Mirror* looks as if it had been written about forty years earlier. But perhaps it is here that lies the solution of the difficulty. We may have before us the work of a young man who grew wiser as he grew older. In the *Mirror* he sowed his wild oats. He began, as clever youths often will, with the romance of law,

with a very 'general jurisprudence,' with history written *a priori*, with a full persuasion that he is wiser than the judges and that those who differ from him live in 'mortal sin.' He lived, as perhaps even a clever youth sometimes will, to love the document and collect materials for the Selden Society. In that case, however, we shall have to add that to the end of his life he kept his early work by him, thought no great evil of it, and proposed to include it in his collection of legal treatises along with the prosaic Britton. But we are none of us severe enough judges of what we wrote while the ivory gate stood open.

The verdict

Were we sitting as a jury to try Horn for the publication of this book, we should have to give him the benefit of the doubt, though we could hardly say that he 'left the court without a stain upon his character.' However, we need be in no hurry to decide the question. A good deal about Horn has been discovered in recent years, and probably much more will be discovered. He was an important man in the City. A few more facts might turn the scale one way or another. For example, could we see him imprisoned, we might begin to believe that the *Mirror* was written in gaol. At present there is evidence against him, but it is by no means conclusive. We should almost certainly acquit him were it not for those verses; and on them we must not lay much stress, for we cannot be sure that they have come to us in their original shape, and it may be within our memories that in days not long gone by, when 'verses' were 'compulsory,' a promising dactyl such as *ĕbŏrĕ* seemed to certain schoolboys too providential to be meaningless.

Failure of the *Mirror*

Once more let it be repeated that, if this book was meant to be read and copied, it was a miserable failure. Our libraries teem with Glanvills and Bractons, with Brittons and Henghams, with *Fet a saver* and *Cadit assisa*. The copy of the *Mirror* that Horn gave to the Gildhall remained, so far as we know, a unique copy until it was unearthed by a generation which had forgotten the thirteenth century and was greedy of old tales. No doubt a

well-read and circumspect historian may find valuable hints in this book; but the statements of law that are in it he will often construe by 'the rule of contrary,' and he will insert a 'not' whenever the author is more than usually positive. If ever we are tempted to accept any statement made in the *Mirror* and not elsewhere warranted, we shall do well to ask ourselves whether we believe that an Englishman called Nolling was indicted for a sacrifice to Mahomet, and to speculate as to what may happen if six centuries hence *The Comic Blackstone* is mistaken for the work of the great commentator.

Defects of the manuscript

If the book was composed so early as 1290 or thereabouts, the existing MS. cannot be the original. But I do not think that in any case it can be the first MS. that was written. It is full of mistakes. Some of these look to me like the mistakes of a clerk who is writing from dictation: they are mistakes committed by the ear; but others seem to be mistakes of the eye.[1] If we suppose Horn to be its author, we may perhaps think of him as getting this MS. made near the end of his life from an older and, it may have been, a very rough copy.

This edition

Mr. Whittaker's endeavour has been to put before the Society an exact transcript of this MS., the letters that in the MS. are *in compendio* being here represented by italic letters; but the capricious punctuation of the MS. has not been preserved. In one respect he has departed from the original. The original is divided into four books. The printed text of 1642 is divided into five chapters, the third book of the MS. having been divided into two chapters in the printed text. As a good many of our law-books contain references to the *Mirror*, it has seemed well that we should at this point preserve the arrangement made in 1642. Our third and fourth books, therefore, represent the third book of the MS.; our fifth book is its fourth.

[1] In particular he has a curious trick of writing *r* instead of *i* at the beginning of a word. On many occasions he has written *reques* instead of *iceques* (mod. Fr. *jusque*). When, as frequently happens, *ces* is put for *ses*, this looks like a mistake of the ear; but we often find *ces* for *ceo*, and this is a mistake of the eye.

Corruption of the text

The text is so corrupt that a good editor of the *Mirror* ought to have that perfect and scientific knowledge of medieval French which would enable him to suggest numerous emendations. In particular he ought to know what medieval French would sound like when spoken by a medieval Englishman and listened to by a sleepy clerk. Any such knowledge we cannot pretend to have, but Mr. Whittaker may, I think, claim that his text is at all events far better than that which has hitherto been current. The editor of 1642 made many blunders and allowed himself a marvellous licence. One specimen may be enough :—

MS. p*ar* quoi q*e* ne fet mie a crere mesdisaunz ne a la veine voiz del poeple.

1642. per quoy que ne fit my tryer misdemeanors ne al a vicine del people.[1]

Perhaps the oddest mistake is one which speaks of the crimes 'de heresie et de Romery.' Well, 'Romery' might be an offence and a sort of heresy in 1642, but hardly in the days of Andrew Horn or King Alfred. The MS. has *reneire*—that is, renegation. It is not very seemly, however, for us to be pointing out errors when we are but too conscious that we have not done all that philological skill and legal learning might have done for the restoration of our text. In translating it an attempt has been made to make the translation of bad passages serve as a comment upon them : in other words, conjectural amendments are thrown into the translation instead of being thrown into footnotes. A few passages we have been compelled to leave untranslated.

Last words

We owe our best thanks to the Master and Fellows of Corpus Christi College for allowing us to transcribe the MS., and to two successive librarians of the College, namely, the late Mr. S. S. Lewis and the Rev. J. R. Harmer (now Bishop of Adelaide), for many courtesies; our debts to Dr. Verrall of Cambridge, and Dr. Liebermann of Berlin, we have already acknowledged. Mr. H. S. Milman has

[1] Ed. 1642. p. 141; below, p. 59.

been kind enough to allow us to see some valuable notes on the authorship of the *Mirror* that he wrote a few years ago. We could wish that the book had fallen into the hands of an editor who would have solved all its riddles.

F. W. M.

April 18, 1895.

Postscript.—Whether our author intended his book to be a Mirror of Justices or a Mirror for Justices is not very certain. Near the beginning we find 'Mireur a Justices' (p. 3), while in the *Explicit* we find 'Mireour des Justices.' The Latin *Incipit* gives us 'Speculum Iusticiariorum.'

It has been pointed out to me that there may be in those mysterious verses a pun that I had not detected. We have the words *apprenticiis ad barros* immediately followed by the word *ebore*. I do not think that the word *barros* (which, though rubbed, is fairly legible) need surprise us, for a masculine *barrus* seems to have been in use as well as the more common *barra*. Again, the plural of the word seems to have been sometimes used to describe what we should call the *bar* of a court. Besides, the versifier may be speaking of the apprentices at the *bars* of the various courts. But, if an undesigned, it is a curious coincidence that he has brought into close contact with ivory (*ebur*) a word (*barros*) which may mean elephants. This word (*barrus*) occurs in Horace, *Epod.* 12. 1, and, though a very rare word, seems to have made its way into medieval glossaries. If we suppose that there is a pun, then, as our Secretary, Mr. B. F. Lock, suggests to me, the apprentices to the bars are also apprentices to the elephants and receive a gift 'graced with tusks' (*ebore gratum*). This book, we may say, conveys to the apprentices a present grateful as tusks to young elephants (for it will enable them to fight), while it provides solid food for older lawyers. He also suggests that *gratum* may be a mistake for *gratius*. This, if we assume that *iuridicis* was pronounced with an initial

vowel sound, might 'scan,' while it would make grammar and sense without the pun, and yet would not interfere with the pun, if pun there be: 'a gift to the law students 'more precious than ivory (to elephants).' Either of these suggestions might enable us to say that the first four lines can dispense with the fifth, and that the juxtaposition of ivory and Horn is accidental. Whether *barrus* (elephant) was a word with which our author was likely to be acquainted is a question that I must leave to others. The supposition that the copyist of the manuscript wrote *ebore* when he ought to have written something else will not be ignored by those who know him.

ERRATA.

P. 48, line 10: *le denger* should be *ledenger*, meaning to abuse, to insult. See the next correction.

P. 107. This passage about Leuthfred's statute appears again on p. 152, in a correcter form. Instead of *des sus estuz et mis* we should read *desvestuz et nus*. Translate as follows: 'who ordained that one might defend [= deny] opprobrious words [= charges of having used opprobrious words] and naked and devested contracts by one's law [= by compurgation].' The word *ledenge* means insulting, opprobrious. See Ducange, *Gloss. franç.* s. v. *ledangier*, *ledenge*; La Curne de Sainte-Palaye, s. e. v.; Diez, s. v. *laido*. It is connected with Mod. Fr. *laid*: Littré, s. v. *laid*.

LE MIREUR A JUSTICES

THE MIRROR FOR JUSTICES

ISTE LIBER VOCATUR SPECULUM JUSTITIARIORUM.

Hanc legum summam si quis vult iura tueri
Perlegat et sapiens si vult orator haberi.
Hoc apprenticiis ad barros ebore munus
Gratum juridicis [1] utile mittit opus.
Horn mihi cognomen Andreas est mihi nomen.

Cum jeo maperceyvoie devers de [2] qe la lei deveroyent governer par rieules de droit, aver regard a lur demeine terriens proffiz, e as princes seignurages e amis plere, e a seignuries e avoir amassier, e nient assentir qe les dreiz usages fusent unqes mis en escrist, par unt poer ne lur fuse toleit, des uns par colour de jugement prendre, les autres exiler, ou enprisoner, ou desheriter, saunz peine emporter, coveranz lur pechie par les excepcions de errour e de ignoraunce, e nient ou poi pernaunte regard as almes de peccheours sauver de dampnacioun par leaux jugements, solom ceo qe lur office demaunde, e eient usez en cea a juger la gent de lur testes par abusions e examples dautres erpanz en la lei plus qe par droites riules de seint escripture en arrerissement grantment de vostre [3] aprise, qi edefies sanz foundement e apernez a juger eins ces [4] qe vous vous conoissez en jurideccion qest pie de vostre aprise, e en le de terre einz ceo qe en lei de persones, auxi com est de

[1] The word *juridicis*, which is not now legible, is supplied from a comparatively modern copy of the verses, which has been written on the first page of the MS.
[2] Supply *ceux*. [3] Or *nostre*. [4] Corr. *ceo*.

THE MIRROR OF JUSTICES.

Read me, whoe'er the substance of the laws
Desires to see, or plead with sage applause.
Here Ivory's grace attracts apprentice eyes,
While profit for the coif our book supplies.
Horn—Andrew Horn—the author is who writes
[Thus Horn with Ivory, Truth with Grace unites].

When I perceived that divers of those who should govern the law by rules of right had regard to their own earthly profit, and to the pleasing of princes and lords and friends, and to the amassing of lordships and goods, and would never assent that the right usages should be put in writing, whereby would be taken from them the power of arresting some by colour of judgment, and of exiling, imprisoning, or disheriting others, without suffering punishment therefor, and when I saw them cloaking their sin by the 'exceptions'[1] of error and ignorance, and having little or no regard to the salvation of the souls of sinners from damnation by lawful judgments, as their office demands, and having hitherto used to judge folk out of their own heads by abuses and precedents of others erring in the law, and not by the right rules of Holy Writ, to the great hindrance of your endeavour, all ye who build without foundation, and take on yourselves to judge before that ye are learned in jurisdiction, which is the very groundwork of your profession, and hold yourselves out as learned in the law of land before ye have mastered the law of

[1] We might say 'special pleas,' or simply excuses; but our author chooses to use a technical term.

ceux qe aperment arz avant les parz :—Je persecutor de faus juges e par lur exsecucion fausement enprisone, les privileges le Roi e les vieuz roulles de sa tresorie, dount amis me solacerent en mon soiour,[1] cerchai, e le foundement e la nessaunce des usages dEngleterre donez por lei, oveqe les gueredouns des bons jugez e la peyne des autres i trovai, e a plus bref qe jeo savoie la necessite mis en remenbraunce, a quoi compaignons meiderent destudier el viel testament, el novel, el canon e en lei escrist.

Trovames qe lei nest autre chose qe riules donees par nos seinz predecessors en seinte escripture por sauver almes de dampnacion perpetuele, tut soit ele par faus juges defusecz. E trovames qe tote seinte escripture remeint el vieu testament e el novel. Le viel contient treis ordres, lei, prophetes e agiographes. En la[2] sont vj. volums pentateuc, Genesis, Exode, Leviticus, le livre de Numeri e le livre Deuteronomii. En lordre des prophetes sunt viij. volums, Josue, Judicum, Samuel qi est le primer e le secunde des Rois, le quart Malachiel qi est des Rois e contient le tierz livre e le quart des Rois; le quint est Isaie; le sisime Ieremie; le setime Ezechiel; le utime le livre de xij.[3] prophetes. En lordre des agiographes sunt ix. volums, Iob, le livre de Psaumes, les Proverbes de Salomon, dEcclesiastes, Cantica Canticorum, Daniel, Paralipomenon, Esdras, e Hester. E estre ces[4] sunt autres livres el viel testament, tut ne soient il auctorizes el canon, sicom Thobie, Judith,

[1] Or *sorour*.
[2] Supply *lei*.
[3] Supply *petits* (?).
[4] Corr. *ceo*.

Machabees e ceo qe lenz est de Salomon e dEcclesiastes. Le novel testament contient les evangelistres, les apostres e les seinz peres. Les evangellistes contienent iiij. volums. Le scripture des apostres contienent iiij.; les epistres Pol, les epistres del canon, le Apocalips e les Actes des Apostres. De lescripture des piers nen ad nul certein noumbre determine.

E de nous usages fiz concordaunce a lescripture. E en langage plus entendable en eide de vous e del comun del poeple e en vergoigne de faus juges compilai ceste petite summe de la lei des persones, des genz, en v. chapitres, ceste assaver, en pecchiez countre la seinte pees, accions, excepcions, jugemenz, abusions, qe jeo appellai Mireur a Justices, solum ceo qe jeo trovai les vertues e les substaunces embullees e puis le temps le Roi Arthur usez par seinz usages accordaunce [1] as riules avantdites. E vous pri qe les defautes voillez redrescier e aiouster solom ceo qe par verrei garraunt enporrez estre garantiz e procurer a reprendre e confondre les cotidienes abusions de la lei.

[1] Corr. *accordauntz*.

LIBER I.

DE PECCHES CONTRE LA SEINTE PEES.

[*Ch. I. De la nessaunce de la seinte ley.*] [1]

Dieu tut pussant moustra plus de affeccion a creature humeyne qe a autre q*u*ant il la fist a sa semblaunce e la [2] dona discrecion, regardant qele estoit continuelement aticee a pecchie p*ar* iij. manere de adv*er*saries, e la [2] dona lei pur chacier peccheours a sauvacion p*ar* t*er*riens peynes, qi de p*ur*e amour dever Dieu ne voillent cesser de pecchier e en fist Moysen doctour qi lu tient ore lapostoille.

Cele lei p*ar* lordeinement de nos seinz p*re*decessors est p*ar*tie en deux volu*m*s, el canon q*e* se conoist en amendemenz de pecchiez espiritieus p*ar* amonicions, p*r*iers, repr*i*ses, e escomengez : en lei escr*i*ste q*e* se conoist en corrections des pecchiez mat*er*ieus par somo*n*ses, attachementz e peynes. Lespiritele guient les prelatz. Les autres guient les lais pr*i*nces ; e se eide lune p*ar* lautre.

La lei dunt ceste sum*m*e est fete est estrete des aunciens usages garantiz de seinte escr*i*pture, e pur ceo qele est gene*r*alement done a touz est ele apele comune. E por ceo q*e* nul autre lei est for cele, est ele une [3] dantiquite en concilx gen*e*r*a*lx ou p*ar*lemenz est suffert destre use p*ar* seins usages. E ceo div*er*sement par lus solom les div*er*se qualites de la gent de div*er*s regiouns e lus. E ces usages

[1] The titles of this and the following chapters are in some cases supplied by us from the preceding Table of Contents.

[2] Corr. *lui*.

[3] Some mistake may be suspected.

places, cities and boroughs, these usages are varied by ancient privileges, to the easement of the folk of those places.

All our customs are also founded for the salvation and exaltation of the Holy Peace of God; and the knowledge and wisdom that comes from God is to judge the folk, not at will by analogies and precedents that are not canonised, but by love of peace and chastity and temperance, and by friendly admonition towards mercy and good works.

[*Ch. II. Of the Coming of the English.*]

After that God had abated the nobility of the Britons, who had recourse to force rather than to law, He delivered the kingdom to the humblest and simplest of all the neighbouring nations: to wit, the Saxons, who came to conquer it from the parts of Almaine. Of which folk there were as many as forty sovereigns, who all aided each other as fellows. They first called this land England, which theretofore was called Britannia Major. And they, after great wars and tribulations and pains long time suffered, chose from among themselves a king to reign over them and to govern the people of God and to maintain and defend their persons and goods by the rules of right.

And at his crowning they made him swear that he would maintain the Christian faith with all his power, and would guide his people by law without respect of any person, and would be obedient to holy Church, and would submit to justice and would suffer right like any other of his people. And after this the kingdom became heritable. And according to the number of the companions who remained the kingdom was divided into districts, and to each companion a district was delivered, to hold and defend against enemies, according to the estate of every of them: to wit—

Norfolk	Hertford	Kent
Suffolk	Middlesex	Surrey
Essex	London	Sussex

Suhampteschire	Cestreschire	Norhamptoneschire
Herefordschire	Derbischire	Oxenefordschire
Wilteschire	Notinghamschire	Wirecestreschire
Somerset	Leicestreschire	Warwickschire
Dorset	Lancastreschire	Roteland
Devonschire	Westmereland	Grantebiggeschire
Cornewaille	Cumberland	Huntingdonschire
Gloucestreschire	Norhumberland	Bokinghamischire
Salopsechire	Everwickschire	Bedefordschire
Staffordschire	Nichole	Barrocschire

E tut seit qe le Roi ne deit aver nul pier en sa terre, pur ceo neqedent qe le Roi de son tort sil pecche vers ascun de son poeple ne nul de ces commissaires ne poet estre juge e partie, convenist par droit qe li Roi ust compaignouns pur oir e terminer as parlementz trestuz les brefs e les pleintes de torz le Roi, de la Reyne, e de lur enfanz, e de lur speciaus, de qi torz len ne poet aver autrement comun dreit.

Ceus compaignons sunt ore appellez contes apres le latin de comites, e issi sont hui ceux pais appellez comtiez e en latin comitatus, e ceo qest dehors ces countiez as Engleis est de conquest puis cele tens.

Ceus compaignouns apres la partie del reaume en pais partirent lur genz e la gent qil troverent remise en centeines, e a chescun assignerent un centener, e solom le nombre de centeines partirent chescun pais e a chescun centener assignerent sa partie en certeines metes pur gardre e defendre ovesqes sa centeine, issi qil fusent aperesz a coure a armes a totes les foiz qe cri levast pur enemis ou qe mestier en fut. E celes parties sunt en alcuns lus appellez hundredes solonc la noumbre de cele primere gent; e en ascuns lus tridengs

other places they are called trithings or wapentakes, an English word equivalent to the French *prise d'armes*. These divisions were made in order that the peace of God, which is charity and very love, might be maintained.

[*Ch. III. Of the original Constitutions.*]

For the good estate of his realm King Alfred caused his counts[1] to assemble, and ordained as a perpetual usage that twice a year or more often if need should be in time of peace, they should assemble at London to hold parliament touching the guidance of the people of God, how the folk should keep themselves from sin, and live in quiet and receive right according to fixed usages and holy judgments.

Under this statute divers ordinances were made by divers kings down to the present time, which ordinances are disused by those who are less wise and because they are not put in writing and published in definite terms.

One of the ordinances was that everyone should love his Creator, giving proof thereof by his works according to the articles of the Christian faith. And tort and force and every sin were prohibited.[2]

It was assented that the following things should belong to the kings and to the right of the crown: to wit, sovereign jurisdiction, sovereign seignory over all the land as far as the mid-stream of the sea round the land, coin, franchises, treasure anciently hidden in the earth, waif, estray, chattels of felons and of fugitives which remain when rights of others are satisfied,[3] counties, honours, hundreds, sokens, gaols, forests, the chief cities, the chief ports of the sea, the great manors. These rights the first kings retained, and of the remnant of the land they enfeoffed the earls, barons, knights, serjeants and others, to hold of the kings by services provided and ordained for defence of the realm.

[1] We write *count* rather than *earl*, for our author is playing with etymology.

[2] It is just possible that the writer is referring to the opening sentences of Canute's laws or one of the other ancient codes.

[3] The felon's just debts ought to be paid.

[the ar-
tion
claimed by
ancient
ags

And coroners were ordained in every county, and sheriffs [*vicecomites*] to ward the districts when the earls [*comites*] demised themselves from their wardship; also bailiffs in the place of the hundredors. And it was ordained that sheriffs and bailiffs should cause the fee tenants of their bailiwicks to assemble in the county and hundred courts, and that equity should be administered, and that each should judge his neighbour as he would himself be judged in a like case at another time; and that this should be so until the usages of the realm should be put in writing and established in definite terms. And albeit one cannot bring a free man into servitude against his will, nevertheless it was generally assented that all free fee tenants should assemble themselves in the county and hundred courts and in the courts of their lords, if they were not specially privileged and exempted from making such suit, and that they should there judge their neighbours; and that right should be speeded before the king and his commissioners from fifteen days to fifteen, and in the county courts from month to month, unless the size of the counties should require a longer respite, and in other courts from three weeks to three weeks;[1] and that every free fee tenant should be bound to make such suit, and that every fee tenant should have ordinary jurisdiction; and that right should be speeded from day to day to foreign plaintiffs in fairs and markets as with dusty foot[2] according to the law merchant.

And turns of sheriffs and views of frankpledge were ordained, and that none of the age of fourteen years or upwards should be received in the kingdom beyond forty days, except men travelling in the guise of pilgrims or messengers, unless they were first pledged by freemen and sworn to the king by oath of fealty and afterwards received into a tithing.

It was ordained that every plaintiff should have a remedial writ to his sheriff or to the lord of the fee in the

[1] This gives the effect of the writ of 1229 printed in the Annals of Dunstable, p. 119.

[2] Alluding to the so-called pi-powder courts.

form following:—C. hath complained to us that D. etc., and therefore we, committing this matter to thee in our stead, command thee that thou do hear the said cause and determine it in due form of law.

And it was ordained that everyone should have from the king's chancellor a remedial writ for his complaint without difficulty, and that everyone should have a copy of the process relating to his case [1] under the seal of the judge or of the other party.

It was ordained that coroners should receive appeals of felony and give judgments of outlawry, and that they cause views to be made in the cases mentioned below, and that the neighbouring townships should make presentment to the coroners in the county courts concerning the corpses of men slain by misadventure, and the names of the finders; and that every district should present felonies, mischances, and other articles presentable in the eyres as sin, so that the kings may for this purpose cause them to be summoned against the coming of the kings or of their justices assigned to hold all manner of pleas. And by reason of the great damage that the commonalty suffered by amercements issuing from concealments and defects in such presentments at the eyres, it was agreed that such presentments should be made in the eyres by the coroners on behalf of the whole commonalty; and thus coroners are the bailiffs of the commonalty so far as expense is concerned, but none the less are they ministers of the king, because they make oath to him. Nevertheless as regards personal trespasses the coroners alone are punishable without any loss falling on those who elected them, if they [the coroners] are sufficient for the due amends of their trespasses.

As to the exchequer it was ordained in manner hereafter mentioned, and the pecuniary punishments of earls and barons and of those who held whole counties or baronies or members thereof were determined, and their amercements

[1] Apparently a copy of the record of what has been done in the cause on each day on which it has come before the court.

were to be affeered by the barons of the exchequer; and the estreats of their amercements were to be sent to the exchequer or they were to be amerced in the king's court.

It was ordained that none should have jurisdiction after a plaint of wrong has been made before the plaint is determined: that is to say, that none should have jurisdiction in the same plea. Hence the clause in the writ of right, *Et nisi feceris Vicecomes faciat.*[1]

It was ordained that everyone of the age of fourteen and upwards should be ready to slay mortal sinners in their notorious crimes and to pursue them from vill to vill with hue and cry if they could not kill or catch them; and should put the contumacious in exigent or banish them in manner hereafter mentioned. Also that none should be outlawed save for mortal felony, or elsewhere than in the county where the sin was done.

And it was ordained that the king's court should be open to all plaintiffs so that they might have without delay remedial writs as well against the king and queen as against any other of the people, for every injury, save where there is to be vengeance of life or member, in which case procedure is by plaint without writ.

It was ordained that no king of this realm could change, impair, or amend his money, nor make money of anything save silver without the assent of all his earls.

It was ordained that felonies should be attainted[2] by appeals, and that appeals should in some cases be determined by battle, and that the exigents of those who were contumacious should endure through three successive county courts before the outlawry.

It was ordained and generally assented that all fee tenants should be obedient to appear at the summonses of the lords of the fees; and that if a man should be summoned elsewhere than in the fee of the author of the summons or more often than from court to court, he should not be

[1] Perhaps the point is that there is to be no appeal from one seignorial court to another; Bracton, f. 329 b.

[2] Translation doubtful.

bound to obey such summonses except at the cost of their authors.

It was ordained that a knight's fee should come by inheritance to the eldest son, and that a socage fee should be partible among the male children, and that no one should be able to alienate more than a quarter of his inheritance without his heir's consent, or to alienate his purchase away from his heirs unless assigns were mentioned in the gift.

It was ordained that everyone should be able to endow his wife at the church door without the consent of his heir, and that female heirs or widows should [not] marry without the assent of their liege lords, so that lords might not be bound to take the homage of their enemies or of other unfit persons. And this was prohibited upon pain of the forfeiture of the fees, whether the consent of parents had been given or no. Also that widows should lose their dowers if they married without the consent of the warrantors of their dowers. Also they were to be disinherited and lose their dowers who allow themselves to be seduced before marriage; but widows should not lose their inheritance by unchastity.

And that the eldest son can forfeit nothing to the prejudice of his ancestor or his heirs in the lifetime of the ancestor whose heir apparent he is.

It was ordained that the lords of fees should cause their tenants to be summoned by the award of their peers in the courts of their lords or in the county or hundred courts so often as they should deny or refuse to perform their right services or commit a forfeiture as against their lords by deed or by word; and conversely in case the lords should commit a forfeiture as against their tenants; and that then they should be acquitted or should forfeit their liegeance with the appurtenances by the award of the suitors touching all they held of their lords; and that outrageous and tortious lords should lose the fees and the services, and that the tenants should achieve [1] themselves to the superior lords of the fees.

[1] The tenant paravail achieves to the lord paramount: that is, acknowledges him as his immediate lord or head (Lat. *accapitare*).

It was forbidden that any distress should be made by men's movable goods; it was to be made by their bodies or their fees save in certain special cases mentioned below. And it was forbidden that any should deny to another reasonable distress or withhold any dead naam on tender of gage, or any live naam on tender of pledges or sufficient gage.

It was ordained that children should remain in ward with their chattels and their inheritances and that their guardians should answer for their trespasses, and make satisfaction to the injured save in cases of felony; and that their marriages should belong to their liege lords; and that scutages, reliefs and aids should be given by the tenants to the lords for relieving inheritances, for the knighting of the heirs of their lords and for the marrying of their eldest daughters; and that heirs male should do homage to their lords, and that heirs female should swear fealty; and that inheritances should descend to all the children under warrant of the right of possession, and that the male should exclude the female and the nearer the more remote by warrant of the right of property.[1]

It was ordained that mortal sinners should not be suffered to dwell among the innocent; also that the king should have the right to waste the tenements of felons, or to take the value of their lands or rents for one year; and that he should have the deodands; and that the chattels of usurers should belong to the king and that the inheritances of usurers should remain as escheats to the lords of the fees.

And essoins were ordained in mixed and real but not in personal actions, as will be said hereafter.

It was forbidden that anyone should alienate outside the realm the issues of any lands or rents.

It was forbidden that money should be carried out of the realm.

It was forbidden that wine should be sold in the realm save by the tun or pipe.

[1] Bracton, f. 64, holds that all the dead man's sons are *pares in jure possessionis*, though the firstborn is preferred *quoad jus proprietatis*.

It was forbidden that any should sell wool out of the realm, or should slay a lamb or calf capable of living, nor sheep nor wether.

It was forbidden that any bishop should ordain laymen to the order of clerks beyond the number necessary for serving the churches, lest the king's jurisdiction should be decreased or diminished.

It was ordained that the poor should be sustained by parsons, rectors of the churches, and by the parishioners, so that none should die by default of sustenance.

It was ordained that fairs and markets should be held in certain places, and that buyers of corn and beasts should give toll to the bailiffs of the lords of the markets or fairs: to wit, one halfpenny for ten shillings of goods, and for less less, and for more more, in proportion; no toll, however, was to exceed one penny for one kind of merchandize. This toll was ordained as evidence of the contract, for every privy contract was prohibited. It was ordained that no action should be received in judgment if there were not present proof by witnesses or some other thing, and that no one should be bound to answer a writ, in a venial action in the king's court, before a judge commissary, until the plaintiff should have found security for damages and reimbursement of expenses if he failed in his action save only the recognitions of the four petty assizes, certifications, attaints, redisseisins, and other cases which likewise belong to the king *ex officio*. King Henry I. mitigated this ordinance in the following manner in favour of poor plaintiffs, that those who had not sufficient present security should pledge their faith to make satisfaction to the utmost of their power, and according to a reasonable taxation. In summonses the same rule. In hatred of perjury attaints were ordained in all actions.

It was forbidden that any foreign merchant should frequent England save at the four fairs, and that ~~no~~ [alien] any should dwell in the land for more than forty days.

It was established by the courtesy of King Henry I. that all husbands surviving wives who had conceived

by them should hold the inheritance of their wives for all their days.

Divers other ordinances were made then and afterwards, in aid of the peace, as will hereafter be said.

Ch. IV. Division of Sins.

There is a short division of sins, for they are either mortal or venial, as the penalties show. The following are mortal sins: the crime of laesa majestas, the crime of falsification, the crime of treason, the crime of arson, the crime of homicide, the crime of larceny, and the crime of hamsoken.

Ch. V. Of the Sin of Laesa Majestas.

The crime of laesa majestas is a horrible sin committed against the king, and this may be against the king of heaven or earth. Against the king of heaven in three ways: by heresy, apostasy, and sodomy; against the earthly king in three ways: by those who kill the king or compass his death; by those who disinherit him of his realm, or betray his host, or compass to do so; and by those avowterers who defile the king's wife, or his eldest legitimate daughter before her marriage, she being in the ward of the king, or the nurse suckling the heir of the king.

Heresy Heresy is a wicked and false belief arising from error in the true Christian faith. This sin includes sorcery and divination, which are species of heresy. In cases which are not notorious guilt is proved [either] by presumptions arising from evil and forbidden deeds, as is the case with those who by bad arts arising from bad belief, or it may be from want of firm belief, work hurtful marvels, or else by confession and open avowal of error.

Of Sorcery Sorcery is the art of divination. We use 'divination' in an evil sense, as we use 'prophecy' in a good sense. Of divination and its species. Divination is wont to be made in

especes. Dunt une manere de divinaille se fet par le mal feie par laquel la fitonesse suscita Samuel qi garni Saul de sa mort. Lautre espece est periromancie qe ceo fet par le fieu. Lautre est aermancie qe se soloit fere par signes en leir. Lautre fu idromancie qe se fist par signes en euue. Lautre fu geomancie qe se fist par signes en la terre. Lautre fu nigromancie qe se fist par morz qe lem fesoit parler. Lautre fu augurrie qe se fist par signes en volz, chanz, e gargons doiseaus. Dautrepart soloient ascuns divinours crere en sors, ascuns en songes, ascuns en trouveure de vers el psauter, ascuns emporter evvangires e charmes as cols, ascuns en esternuers, ascuns enchantement e charmes, ascuns ensignees de boiaus des bestes, e des espaules de motouns, ascuns es signes de paumes, ascuns en estrenes,[1] e es priners[2] encontres. Ascuns furent appellez mathemaz e mages qe devinerent par les estoilles, autres furent arriols qi pristent respons del deable parmi mahoumez, autres aruspeaus qi aovrerent es neuz[3] es jours e es houres e issi ordenerent lur bosoignes, e autre manere furent plusours. Dunt totes maneres de divinaille es escomenge e maudite de dieu e del eglise, e defendu tant com mahoumerie, e chose contre la droite foi. E ceo proeve seint Augustin par mouz des resons, e de ceo est qe tuz ceux qe travaillent a deviner pur saver choses futures, si dounent a creatures ceo qe appent soulement a dieu. Parunt tieux menestreus sunt tuz pernables e remuables hors del comunaute del seint people deu, si qe nul bon crestien ne soit entochie de lur art, ne parcener de lur pecchie.

Item de ceux qi encorunt le crim de majeste e primerement de perjurie. Le pecche de majeste est vicine a plusours autres pecchiez. Car tuz ceux qi pecchent en perjurie par quei lem soit fei mentu ver le Roi cheent en ceste pecchie, sicom les ministres le Rei jurez a fere droit e se perjurent en ascun point, e sicom ceux qi descressent le Rei de ces franchises[4] dautre manere de droit appendaunt a la coroune

[1] Or *estreues*.
[2] Corr. *primers*.
[3] Or *ueus*.
[4] Supp. *ou*.

rights belonging to the Crown, by encroachments, purprestures, or in other manner, though they do not sin mortally.

By perjury sin all those lieges of the king who encroach upon his jurisdiction, and of themselves make justices, sheriffs, coroners, or other officers against the law. By perjury towards the king sin all those lieges of the king who appropriate to themselves jurisdiction, to wit counties, honours, hundreds, sokens, return of writs, or other hereditaments, wardships, escheats, reliefs, suits, services, marriages, fairs, markets, infangenethef, utfangenethef, wreck, waif, estray, treasure hidden in the earth, warrens in their own lands or in another's, toll-traverse or other toll, pavage, pontage, chiminage, murage, carriage, or such other customs. By perjury against the king sin those lieges of the king who take abjurations of felons or fugitives and are not coroners nor authorised by the king. And those who remove [the name of] any person indicted or appealed of crime out of the roll of the coroner, and those coroners who more than once receive the appeals of approvers or procure the wrongful appeal of an innocent man by an approver. And those who have determined the appeals of approvers concerning acts done out of their territories or whereby any foreigner is appealed; and those coroners who knowingly allow the chattels of felons and fugitives to be mainprised against right, or conceal them, wholly or partially, or retain them to their own use to the damage of the king, or who cause them to be delivered otherwise than to the townships, or who set them down in the roll at more than their true price to the prejudice of the townships; or allow their servants to have garments or any other thing seizable for the king's profit, or the garments of the dead, or delay the performance of their duty through their covetousness.

Into perjury against the king fall those officers who forgive fines or amercements belonging to the king, or other manner of corporal or pecuniary punishment, without special warrant, and those officers who by summonses and adjournments cause good folk to labour in vain, as at gaol

deliveries, assizes, inquests, or elsewhere. And all those subjects of the king who curse or excommunicate him, and all those subjects who bear arms against the king, and those who flee from his battle or lawful host. Likewise those ministers who unlawfully hinder folk from going to the war with the king, to which they are bound to go, or to which they have received due summons, or connive at their absence, or procure that men be not distrained to knighthood according to the customs of the kingdom.

Into perjury against the king fall all those subjects who hold pleas *de vetito namii* and have not the [franchise of] return of writ, or hold pleas of the taking of beasts or other plea pertaining to the king's jurisdiction only, without special commission from the king, or take cognisance of cases of life, limb, imprisonment, bloodshed, false judgment, or thing disavowable in law, without commission under the king's writ; and all those officers of the king who knowingly maintain false actions, false appeals, or false defences.

Into perjury against the king fall those officers who refuse plaintiffs remedial writs of possession, attaint, or other writs of common form, or otherwise delay or sell right, and those who wrongfully delay or disturb right judgments and their execution, and all those who wrongfully execute tortious judgments, and all those who exercise their privileges and franchises tortiously or excessively. By perjury against the king sin those officers who take fines to the use of another than the king, for the alienation of treasure trove, wreck, waif, estray, or bloodshed, or imprisonment, ve de naam, redisseisin, disseisin, perjury, for resisting the execution of lawful judgments, for executing tortious judgments, usury, purprestures on the king, or any other thing the cognisance of which pertains to the king; likewise those receivers who pay none of the king's debts as was enjoined them, or render part in satisfaction of the whole, and do not pay over the remainder to the king.

By perjury against the king sin those who wrongfully charge the king with works [done] in repair of castles or elsewhere or other false expenditure. Likewise those who

expend the stone, lime, timber, or other thing belonging to the king, elsewhere than in his service without sufficient warrant.

Into perjury against the king fall escheators who make waste in the wardships or fees of the king, or take venison, fish, or other things unlawfully, or seize the chattels of dead persons by virtue of their authority and release them for reward, or endow widows to the damage of the king, or make extents prejudicial to the king and answer for less than the true value of the property to the king, or knowingly allow possessions to remain in mortmain which ought to be taken into the king's hands, and of which he ought to have the profits. And those who receive more from their bailiwick than they answer for to the king, or who knowingly allow feoffments of possessions or advowsons of churches prejudicial to the king, or who have allowed the alienation of wardships, or marriages to the king's prejudice, or allow [premature] proof of the ages of children to the king's prejudice, or take fines for wardships or marriages without writ to the king's prejudice, or disseise anyone by colour of their office, or take money from anyone for their own amercement.[1]

By perjury against the king sin sheriffs who overburden their hosts with too many folk, horses, or dogs, and who levy fines or amercements for escapes from prison, or other thing disallowed by law, before such escapes are adjudicated on by justices in eyre. Likewise those who increase or diminish fines and amercements fixed by affeerers or jurors. And those officers who conceal in prison persons who should be delivered, and do not present them for judgment.

By perjury sin all those officers who are guilty of negligently conniving at the alienation, occupation, or subtraction of the franchises and rights of the king, and those who anywhere in the kingdom change old forbidden money for new save at the king's exchange.

[1] A sheriff who has been amerced for official misconduct must not exact the amercement from his justiciables.

Ch. VI. Of Falsification.

Falsification is committed in two fashions: by falsifying the king's seal, and by falsifying his money.

His seal can be falsified in several ways. It is falsified every time that a writ, script, or letter is sealed with it, of which the substance, matter, or form cannot be warranted by the king, by the law, or the right customs of the realm; but this is not to be understood of every abatable writ. It is falsified if a man seals with it after that the chancellor or other keeper is aware that he has lost his authority by the death [of the king] or in any other manner. It is falsified when a writ or letter passes it against the king's orders. It is falsified by those who seal with counterfeit plates, and by all those who seal by evil art or unlawful trick. It is falsified by those who seal with it and are not authorised to do so.

Falsification of money. Money was ordained round and quarterable, and ought to be thus struck, so that the outer circle should be apparent all round it and unbroken, or otherwise a coin was not to pass; and that the pound should be twelve ounces of fine silver; and it was agreed that the king should take sixpence for the sealing of each writ and twelve pence for the coining of every pound of new money. It was ordained that other kinds of money should not be current in this realm. Money is falsified by those who make it unlawfully through evil desire of gain.

It is falsified by those who make it and are not authorised or warranted to do so. It is falsified by those who for evil gain make it with more alloy than is right. It is falsified by all those who make it without the king's die. It is falsified by all those who counterfeit it by evil art and by those who clip it or file it for evil gain.

Ch. VII. Definition of Treason.

Treason can only be committed between those allied, and they may be allied by blood, affinity, homage, oath, or by hire. By blood, as if one kinsman does to another a thing which tends to his death, disherison, or open shame. For the essence of treason is the shortening of life, fear of limb or diminution of earthly honour or increase of villain shame, and in like manner is this sin committed between persons connected by affinity, as between sisters in law, brothers in law, and other such kinsmen; for as consanguinity is a bond between divers parceners descending from one stock and arising from carnal engenderment, so affinity is the relation between persons established by carnal copulation where there is no common ancestry. And as this sin is committed between persons who are kin by affinity or consanguinity, so also it can be committed between those who are allies. Alliance is created by hire, homage, or oath, which oath is sometimes an oath of fealty issuing by way of service from the fee, and sometimes an oath of bodily service. And just as one of the allies, or persons related by blood or marriage, can commit this sin of treason against the other, so *vice versa*. By hire, as if he whom I have hired to do me loyal service and who is seised of my property, for example by way of food or other gift, wages, or guerdon, either falsifies my seal, or defiles my daughter in my room, or my wife, or the nurse suckling my heir, or does something with felonious compassing which tends to my death, great dishonour, damage to my body or estate, or reveals either my counsel with which he is intrusted, or my confession. By hire is to be understood fee, possession, robe, seal, pension, church, rent, or any other thing given, including meat and drink, during the service. And in the same way that a person who takes of my property and is seised thereof can commit treason against me, in like manner can I sin against him. Such action as he can bring against me can I bring against him.

Ch. VIII. Of Arsoners.

Persons committing arson are those who burn city, town, house, man, beast, or other chattels feloniously in time of peace for hatred or vengeance. And if any put fire to a man feloniously whereby he is burned or wounded, notwithstanding that he is not killed by the fire, nevertheless the sin is mortal. Into this sin fall sometimes persons who threaten arson.

Ch. IX. Of Homicide and its Nature.

Homicide is the killing of a man by a man.[1] For if [the killing] is caused by an animal or mischance, then it is not homicide. This sin is committed in two ways: by word and by deed. By word in three ways: by advice, command, and refusal. By advice when a person advises the killing of another, and so also in the case of command. By refusal when one man refuses sustenance to another. By deed in several ways: by blow, venom, or poison, and the deed may be either done by necessity or of free will. By blow, as hereafter is seen in the chapter on appeals. By poison, venom, or drug when a person by hidden felony and feigned friendship gives another to eat or otherwise use something corrosive, poisonous, or venomous, whereby he is killed after a time or directly. By imprisonment, as where a person detains the body of another under colour of right until he dies. By accident, as where one throws or shoots at a bird or other thing. And such homicide may be by misadventure, the falling of a tree, and such other similar accidents. But we must distinguish whether the killer is doing a thing which he may do rightfully, for then he does not sin; or else he is doing something he ought not to do, but nevertheless exercises all the diligence he can by crying out and giving warning, and in that case he does not sin greatly; but if he does not exercise such

[1] A great deal of what follows seems to have been taken with little change from Bracton, f. 120 b.

mortelment. Par necessite, distinctez le quel cele necessite est eschuable ou noun, e si eschuable li pecchie est mortele. Par volunte e ce purra estre de li ou dautre *per*sone. De ly si cu*m* en cas ou genz se pendent ou neient ou autrement se occient de lur *pro*pre felonie. Dautre sicom *par* coup, famine, e autre peyne, en que cas tuz sunt homicides. P*ar* volunte se fest aussi cest pecche sicu*m* par ceux qi peynent homme tant q*e* il gehist aver pecche mortelment cum point ne fist einz pur estre allegie de la peyne desiraunt la mort confest felonie. faussement : e ascune foiz diex [1] *par* recorz de corouners ou de justices destruz. E si cum est de ceux *par* queus contrez, enfanz, e autres qi ne pount aler sunt gitez et lessez en deserz, ou en tieus lieus q*e* en eus ne remeint qil ne moerent de disede [2] tut les envoit dieu socours. E ausi sunt homicides de volunte faus jurours temoins e ceux qi apelent autres ou esclandrent p*ar* enditement ou en autre manere encusent fausement, es queux ne remeint q*e* la mort ne ifust. E ausi ceo fet cest pecchie p*ar* ceux q*e* enp*ri*sounent gent en tiex lus ou en teles peynes les mettent ou lem purra trovir p*ar* enqueste qil estoient plus prees de la mort p*ar* ceux mauveis lus ou celes peines. Par iij. maneres estoit diex occis car Longis le tua de fet ovesq*e* les autres q*e* li pendirent ou penerent. Par langue ou par dit loccist Pilast q*e* li comaunda doccire. E p*ar* voluntie loccistrent les faus testmoins e toux ceaux q*e* si consentirent. E de ceo est q*e* les evangelistes varient des houres de sa mort en ses passions. Cest pecchie contient plusours braunches cestasaver enp*ri*sonement, mahain, plaie, bat*e*rie, e. faus tesmoignaunce en cas.

Enp*ri*sounement est torcenouse detenue de cors de humme. E ceo poet estre en ij maners, ou en com*m*un p*ri*son roiale, ou en p*ri*son p*ri*vee e defendue. En la comun p*ri*son ne fet nul a mettre si noun p*ur* mortel pecchie atteint ou p*ri*ncipalment appele ou endite, e p*ar* jugement

[1] Corr. *tiex*. [2] Corr. *disete*.

qe rasture pur tenurer los de la teste e leveure descarde del teste en [1] mahain e aussi des autres os.

De plaie Plaie est matire de la mort fete par couper darme ou de broche felonessement qe se monstre par longour laour e profundesce, car de coup de piere ou de baston devient rerement plaie mes de brusure.

Ch. X. De Larcin.

Larcin est prise dautri moeble corporel trecherousement contre la volunte celi a qi il est pur male gaigne de la possession ou del us. Prise est dist car bail nest mie title de larcin ne liveree einz la case. Moeble corporel est dist pur ceo qe en biens nient moebles ou nient corporeles sicom de terre ne de rentes ne davoissons deglises ne se fet nul larcin. Trecherousement est dist, por ceo qe si loignour entendi les biens estre fiens a qi [2] il les poeit bien prendre, en tel cas ne sei fet mie cest pecchie. Ne en cas ou lem pren lautri par la ou lem entent qil plest al seignur de biens qe lem les preigne, mes a ceo covendra enseigner aperte presumpcion e evidence. Deux menbres sunt de larcin, lun qe se fet apertement par robberie, lautre qe se fet nuttantre ou privement de jour. Robberie se fet ascune foiz par larrons, ascune foiz par torcenouses destresces de baillifs e dautres qi sunt [3] torcenouses extorsiouns al menu poeple, ascune foiz par extrusours e disseisissors qi a force e apertement pernent autri biens com avant est dist, e ascune foiz par autres qi allopent autries femmes ou gardes ovesqe lur biens. En cest pecchie cheent tuz ceaux qe pernent lautri par lautrie [4] del rei ou dautre grant seignur, sanz le gre de ceaux as queux les biens sunt. Larcin se fet ascune fois par larrons aperz, e ascune foiz par trecheours, cum est en plusour manere de marchaundises, e sicom est de laborours qi emblent lur labours, e cum est de baillifs, recevours e administrors dautriz biens qi emblent en

[1] Corr. *est*.
[2] Corr. *siens e qe*.
[3] Corr. *funt*, which stands in margin.
[4] Corr. *lautorite*.

said that an abrasion of the skull, if splinters of bone were taken from the head, was mayhem; and so with other bones.

Wounding is the cause of death when it is brought about by cutting with spear or other arm feloniously, and the wound has length, breadth, and depth; for from a blow from stone or staff come bruises, but rarely wounds.

Ch. X. Of Larceny.

Larceny[1] is the treacherous taking of a corporeal movable thing of another, against the will of him to whom it belongs, by evil acquisition of possession or of the use. Taking, we say: for bailment or livery excludes larceny. A corporeal movable, we say: for no larceny can be committed of an immovable or incorporeal thing such as land or rent or advowsons of churches. Treacherously, we say: because if the taker believed the things to be his own, so that he could lawfully take them, in such a case he does not commit this sin. Nor does he where he takes another's goods believing that his taking them is agreeable to the owner; but in this case he must show some open presumption and evidence. There are two kinds of larceny: one committed openly by robbery, the other by night or secretly by day. Robbery is committed sometimes by thieves, sometimes by the tortious distraints of bailiffs and others who make tortious extortions from the smaller folk, and sometimes by extruders and disseisors who forcibly and openly take the goods of others, as was said before, and sometimes by others who elope with other men's wives or their wards with their goods. Into this sin fall all those who take a man's goods by authority of the king or other great lord, against the will of those to whom the goods belong. Larceny is committed sometimes by open thieves, and sometimes by tricksters, as is the case in many kinds of merchandise, and is the case with labourers who steal their labours, and with bailiffs, receivers and administrators of other persons' goods, who steal in rendering account.

[1] This definition, with the words about the *usus*, seems to go back to Instit. 4. 1. 1, rather than to Bracton, whom our author has been following in his account of mayhem.

rendaunt acounte. El pecchie de larcin cheent ceaux qi emblent borses ou maletes, e qi autre larcin funt *par* niceste ou quointise des meins, e tuz lur fautours. En ceste pecchie ceaux cheent qi soeffrent les larrons passer cum il les potreient arestier. E ceaux aussi q*e* les porreie*n*t prendre ou desturbir ou garnir autres de lur malice e point nel funt. E ceux qi les concelent pur amiste, thefbote, ou autre loier, ou a escie*n*t recettent lur larcin ou lur p*er*sones. En ceste pecchie cheent tuz ceaux qi emblent p*ar* fauses mesures, e faus pois, ou en autre manere de trecherie p*ar* coverture de marchaundise, e ceaux qi a escient le soeffrent cum il les poreient desturber, e ceaux qi robbent prisons de chose qil eient. En ceste pecche cheent tuz ceaux q*e* torcenousement am*er*cient la gent, ou outraiousement affoerent am*er*cimenz, ou qi out*r*aiousement ou torcenousement condempnent lur p*r*oeine en damages ou en peyne. E ceaux q*e* vieuz tresor qe au Roi appent ou wrec waif ou estrai q*e* au Roi apent a tort li detenent. E ceux q*e* lautri troevent e nel rendent cum il pount e scievent a qi. En ceste pecche cheent touz ceaux qi p*er*nent torcenous ou out*r*aious tolnu en marche, citee, bourg, ville, molin ou aillours, e ceaux qi p*er*nent pavage, murage, chiminage, cariage ou dautre manere de custumes plus q*e* droit nest. En ceste pecche cheent ceux baillifs q*e* enquerent en tournz e en veuues de plus darticles q*e* de peccheours p*er*soneux, e de torz fetz au Roi, e a sa coroune, e de torz fetz al comun de poeple. E ceux q*e* p*ar* extorsions p*er*nent deners de fins fetes pur bel pleder, ou purquei les jurours ne seient enchesonez, e ceaux q*e* am*er*cent ascun de testee sanz renable affoerement de gent a ceo juree. En ceste pecchie cheent ceaux q*e* destreinent desavouablement, e ceux q*e* vendent nams p*ar* la dette le rey dedenz les p*r*imers xv. jours. En ceste pecche cheent ceaux ministres de lescheqere e autres q*e* veent a fere aquitaunce souz le seal del escheqere a chescun de taunt cum il javera paie, e qi plus de une foiz funt une dette levee, e qi p*er*nent loiers p*ar* si q*e* veilles ne se facent

according to the Statute of Winchester, or in order that people be not provided with arms according to common assessment. Into this sin fall thieves of others' deer, fish in a stew, conies, hares, pheasants and partridges in warrens, pigeons and swans, eyrie of all manner of birds. Into this sin fall all those sheriffs, baillifs and other royal officers who unlawfully by extortion take money from the people, as for unlawful default, or for toll-traverse or for other unlawful custom, or for plea in which the judge had no jurisdiction, and those who take money to strike out names from panels and to put others therein. Into this sin fall all those who receive land, tenement, horse or other thing and use it beyond the time fixed at the hiring, and those who by the authority of their bailiwick make disavowable collections of money or money's worth, or take corn or sheaves for scotales and filstales, or do to the people any other unlawful grievance in like case, and those officers who levy a fine, amercement, or other kind of debt several times from one man or several, without making restitution thereof. And those officers who take anything from another than the king or their lords for doing their office, and those who more than twice a year hold sheriffs' courts, or more than once a year hold view of frankpledge in one and the same court, and those who under unlawful articles amerce the people.[1] And those who take outrageous tolls in mill or market, and those who amerce the people by warrant of presentments not made by a complete dozen,[2] or made by others than freemen.

Into this sin fall those who make waste of another's heritage, through evil covetousness or hatred. Into this sin fall pleaders who take outrageous or undeserved salaries, and who are attainted of bad or other improper defences, and those who deny their seals in court, and those who enslave free blood by tortious distresses, and those who make forbidden contracts. Into this sin fall usurers who lend money or money's worth at a fixed usury in a manner

[1] The articles are the 'capitula' of the view of frankpledge.

[2] Presentments made by a jury of less than twelve.

which shows evil covetousness. And those who rob or steal the marriages belonging to others, or abduct nuns or the serfs of others with other men's goods, and all forestallers by whom victuals or goods are raised in price. Forestallers are those who within an enfranchised town purchase to regrate or to sell dearer unlawfully. And those butchers who sell tainted flesh for sound, and those fishmongers who buy and sell against lawful ordinance, and all others, of whatsoever craft they be, working trickery in their crafts [fall into this sin].

Ch. XI. Of Hamsoken.

Hamsoken by ancient ordinance is mortal sin, for by law everyone who is inlaw is to have peace in his house. This sin is committed not only by breaking a house but also by the felonious assault of enemies in time of peace on those who are in their own houses with the intention of reposing therein in peace. The aforesaid assault must be made with intent to kill, rob, or beat those within the house. And albeit such sinners do not accomplish their intent, if nevertheless they in any way break in door, window, or outhouse or the like by their assault in order to enter feloniously, they are guilty of this crime. Into this sin fall those who feloniously and forcibly enter into another's house and do therein any violence against the peace, though they make no breaking; and that whether by day or by night. Likewise those who disseise folk by casting them out of their dwellings and out of their peaceable possessions wrongfully.

[*Ch. XII. Of Rape.*]

Rape is committed in two manners: it is either of things or of women. This sin is put here because King Edward made it mortal by his ordinance, which is founded rather on arbitrary will than discretion.[1] For stuprum is one thing, fornication another, adultery another, incest another, and rape yet another, if we speak correctly and

[1] See Stat. West. II. c. xxxiv.

detrete ou demagee par male garde, ou si longement ieue par quoi ele ne seit jugeable coment ele morust, seit ensi mis en roulle, si qe cele negligence seit punie a la venue le Roi ou de ces Justiciers errantz en cele parties. E si li un seit trovie jugeable, sen avise li corouner ovesqes les bones gentz adunc presentes de la manere de loccision, le quel il morust dautre felonie, ou de sue, ou de mescheaunce. E si de coup, le quel de bastoun, ou de piere, ou darme. E les nouns de ceaux qe ifurent somons e point ne ivindrent, face li corouner mettre en roulle, si qe li pecche de inobedience ne remeine despunie par quoi li coroncr ne puisse a cel foiz fere son office par defaute de jurours.

En cestes enquestes ne tenent mie lu excepcions, actions, ne chalenges de parties vers les persones des jurours. Einz apent a fere paneax de plus sages e par eus, e les moiens par eus, e les meins pussanz par eus. E veuue la charoigne seit enterree. Fetz les paneax jurgent les duzeines; car coroners a celes enquestes, viscountes a lur tourns, baillifs a lur veuues, eschaetours e les ministres le Roi de ses foresz unt poer del auctorite de lur offices a mettre genz a serement, qe nul autre nad sanz le bref le Rei, e ceo est por la savvacion de la pees, e pur le droit le Rei, e pur comun prov.

Les articles sunt ces:—vous dirrez par vos seremenz de la mort de cest vu, le quel il morust de felonie ou de mescheaunce; e si de felonie, lequel de sa felonie demeine ou dautri; e si de aventure, le quel ele vint de dieu ou de homme; e si de famine, li quel de poverte ou de comun pestilence. E dunt il fu, e qi il fu. E sil morust dautri felonie queux il furent principals e queux accesories, e si hu e cri fu leve duement ou noun, e si les veisins y corrurent duement ou noun, e si la menee y fu a droit suye ou noun. E queux le manacerent de vie e de menbre, e queux furent

has been taken away or damaged by careless keeping, or if it has lain so long that one cannot tell how death happened, let it be thus entered on the roll so that this neglect may be punished at the coming of the king or his justices in eyre into those parts. And if it is possible to judge the cause of death, let the coroner confer with the good folk then present as to the manner of the killing, whether the deceased died from another's felonious act, or his own, or from misadventure. If from a blow, whether from a staff, stone, or arm. The coroner is likewise to set down in the roll the names of those summoned thither and who did not come, so that the sin of disobedience through which the coroner has on this occasion been prevented from fulfilling his office, from want of jurors, go not unpunished.

In such inquests there are no exceptions, actions, or challenges of the persons of the jurors by the parties. But it is the coroner's duty to make panels of the better folk by themselves, the mean folk by themselves, and the small folk by themselves. And when the corpse has been viewed let it be buried. The panels being made, let the dozens swear; for coroners at these inquests, sheriffs at their turns, bailiffs at their views, escheators, and the king's forest officers have power from the authority of their offices to put folk to the oath, and no one else has this power without the king's writ, and this for the preservation of the peace, the king's right, and common advantage.

The articles are these:—You shall say by your oaths concerning the death of him whom you have seen whether he died from felony or misadventure; if from felony, whether by his own felony or by another's; if from misadventure, whether it came from God or man; if from famine, whether from poverty or from common pestilence. And you shall say from whence he came and who he was. And if he died from another's felony, who were principals and who were accessories, and also if the hue and cry were duly raised or not, and if the neighbours ran thither as was right or not, and if the menée was rightly followed or not. Likewise who threatened his life or limb, and who were

pledges for his peace. [And you shall say] if he died through long imprisonment or torment, and by whose actions he was further from life or nearer death. And likewise of all the circumstances which could furnish ground for presumptions. In cases where the person died from drowning or falling or other visitation of God, and had not the power of speaking before his death, you are to say the names of the finders, and the four nearest neighbours, and who were his kinsfolk. And further if he were killed there or elsewhere, and if elsewhere by whom and how he was brought there. And then the value of the deodand, its species, and to whose hands it has come, for in cases where a man dies by an accident, according to Randulf de Glanvill, whatever is the cause of death is deodand; and that is taken to be whatever moved in the thing which caused the accident, *e.g.* a horse, cart, mill, sails or wheels of a mill. Ships also and boats are sometimes deodands, but not when on the sea.[1] Loads on horses, goods lying in a ship, mill, cart, boat, or house, are not deodands. And in case of the felony done by another, the jurors are to say who were the felons, in what frankpledge or what tithing they were, or whether they were in ward or in mainpast; also whence they came, and whither they went. And if the person was killed by false judgment, then they are to say who were judges and who officers in executing the judgment, who assessors; and if from false evidence, who were the swearers thereof. Further, if he died from his own felonious act, they are to say the kind and value of his chattels, the names of his kinsfolk, and the names of the finders and the neighbours, and the value of the waste.

Nine kinds of accessories there be: those who command, those who counsel, those who hire or are consenting thereto, those who send, those who aid, those who are partners in the gain, those who acquiesce and do not disturb the offenders by word or deed, and those who knowingly receive them, and those who go out armed. As to adventures in tournaments, combats, jousts, and medleys,

[1] See Bracton, fo. 122.

King Henry the Second ordained that, forasmuch as such sports are dangerous, everyone ought to prepare himself so that God may find him in holy life, that no one may be in mortal sin or hatred of another, but gave leave to every man to try his strength on others in good fellowship in public places in the aforesaid sports, whereby he might know how the better to defend himself against his enemies.[1] And because felony or sin is not to be presumed, coroners were not to meddle with mischances that happened in these public assemblies unless some felony were reported.

Coroners were wont also to hold their views in cases of sodomy, and on infant monsters who had nothing of humanity, or who had more of the beast than the man in them; and these the coroners caused to be buried. But the holy faith grows stronger every day, whereby folk do not burden their souls with such horrible sins so commonly as they used.

They are used also to attend at arsons and inquire who put the fire there, and how and by what felony, drunkenness, or other mischance it arose. And if from felony, who were the principals, who the accessories, and who the threateners.

At the view of old treasure anciently hidden in the earth, it is their duty to inquire how the treasure was found, by whom, and its value; further, whether it was entire, or had been tampered with, or completely taken away, and who took it away, whither, and how much, and who were the finders and the nearest neighbours.

At their view of wreck it is their duty to inquire where the wreck came to land, what things there were, how much, and the value of the separate parts thereof; and whether man, beast, bird, or other living thing came with it or not. It is then to be delivered to the nearest township, or divided among several townships, and they must answer for it to the true owner if he comes to claim it and prove his right within a year.

At their view of a wound it is their duty to see it, and cause to be put on record the length, breadth, and depth of

[1] We know of no such ordinance.

del blescie, en aventure si la plaie garrisse e il sen pleigne, qe li corouner pur tut le counte li puisse eider par son record. Aussi apent a eus aveoir hampsoknes, e denquere des nouns des felouns, e dunt il vindrent e ou il returnerent, e des manaceours e des autres circumstaunces.

Les jurours soient severees par duzzeines, si qe nul duzeine ne parle a autre, einz respoigne chescun juree par sei.

E receuz les presentementz e les verdiz, tant tost sunt il charchables dencuser les conspiratours qi eient procure desavoer [1] ascun peccheour ou denditer innocent en teles enquestes. E bien list as corouners denquere aillours, plus sovent, e par autres, sil entendent de plus atteindre del fet restrix.[2]

Trestuz les enditez par devant corouners, aussi ben del accessorie cum del principal sunt pernables al mandement des corouners par viscountes, e les principals sunt recevables, e les accessories sunt liverables as meinpernours. E en presence de eus, e de viscountes, sunt lur biens moebles e noun moebles pernables en la main le Roi. E par loiale ostente e dividende, sunt celes terres moebles liverables as vilees, por trover ent as prisons e a lur necessite [3] mesnee renable sustenaunce, e de respoundre ent au Roi del remanaunt, savve chescun droit ou as principalx sil sen aquitent, e as accessoires par meinprise.

E si ascun defut se defendre, ou defut ne voet estre justiciable a la lei, bien list a chescun del occire si autrement nel pusse prendre. E Bermond agarda qe les chatieux as futifs remeissent forfez au Roi, savve chescun droit, tut se rendissent il pus a la pees. E Iselgrim dist qil nest mie futif qi se presente en jugement einz ces [4] qe il seit utlaguie.

Si ascun se defut en seintueire e demaunde ent la protection, fet destincter, car sil est custumer lierre,

[1] Corr. *de sauver*.
[2] Our translation is conjectural. Houard refers to the Latin *retrudere*.
[3] Corr. *necessaire* (?).
[4] Corr. *ceo*.

robber, murderer, or a wanderer by night, and known and proclaimed as such by the people and his pledges or tithingmen, or if anyone is pursued for debt or sin not mortal, or if he has been attainted of mortal sin by judgment or by his confession, and has forsworn the realm, or has been exiled, banished, outlawed, or waived, and has returned before his time, or if anyone has sinned mortally in sanctuary relying on his safety, and hoping to be defended by the holy place, such an one, I say, can be taken, dragged and thrust out of the sanctuary, without offence or prejudice to its franchise. But as regards sinners who by misfortune fall into mortal sin outside the sanctuary, and who truly repenting flee to churches, openly declaring themselves contrite and repentant, and who before such wrongdoing were of good report, if such demand protection of the Church, to them King Henry the Third at Clarendon granted that they should be protected by the Church for forty days, and he ordered that the townships should guard such fugitives for the whole quarantine, and should inform the coroners.

At the coming of the coroner it is in the election of the sinner to surrender himself to the king's peace, or to acknowledge his sin to the coroner and to the people and waive the peace of the king. And if he should surrender himself to the king, let him be committed to the gaol to await acquittal or condemnation. If he acknowledges mortal sin, and prays to go forth from the kingdom without the protection of the Church, let him come to the limit of the sanctuary bare-footed, ungirt, in his coat or shirt only, and swear that he will keep the direct road to such port or such passage as he shall have chosen, and that he will not remain in any place two nights together until that for such mortal sin as he shall have acknowledged in the hearing of the people he has left the realm, and further that he will not return in the king's lifetime without his leave, so help him God and the holy gospels. And then let him take a cross, and bear it so long as he shall be in the protection of the Church.

And if anyone remains in the sanctuary beyond the quarantine he shall be debarred from the favour of abjuration. If this is by his default, then after that term none may find him sustenance; and albeit such people are out of the peace and faith of the king, nevertheless none may disturb them so long as they are in the protection of the Church, provided that they be not found out of the road with intent to violate their oath or are doing some other wrong on the road.

If the person slain be unknown, then in such case it belongs to the coroners to enter a *murdrum* on their rolls, according to the statute of King Knut, made on setting out for Denmark, who, for the preservation of his Danes whom he left in England, ordained that whenever an unknown man was slain all the hundred should be in the mercy of the king under a judgment of *murdrum*.[1] Four things relieve from the judgment of *murdrum*: the first if the felon be known or the person killed; for if the felon be known then he can be attainted for the felony. The second, if the felon be taken or has fled to a church. The third, if the killing were not felonious but by misadventure. The fourth, where a man is *felo de se*. Since of a man who is known no *murdrum* can be committed, it is the duty of the coroner in these felonies to inquire into the lineage of such persons who are killed, so that one may know from their kinsmen whether they were of English birth. For if one does not know the name of any of their kinsmen, the presumption will be that they were aliens, and it is for this reason that this kinship is called Englishry, whether such kinship be found on the side of the father or of the mother. If no Englishry be thus found the judgment will be *murdrum*.

To the office of coroner it belongs also to receive the confessions of felons in the hearing of witnesses. Thus it happened in a great felony committed by several sinners in the days of King John, that one of them prayed the king

[1] This seems to come from Bracton, folio 134 b, who took it from the so-called Leges Edwardi Confessoris.

sealer les brefs e les estretes souz cire vert, issaunt de cele place por le prou le Roi.

En la place sont aussi chamberleyns e plusours autres ministres qe ne touche mie mout a la lei.

Ch. XV. Des Menues Cours.

Des assembles premers vindrent consistoires qe len appele ore cours. E ceo en divers lus e en divers maners. Dunt une curt tenent viscountes de mois en mois, ou de . v . someins en v. solom les grandours e les largesces de paiis. E celez courz sunt appellez countiez ou les jugemenz se funt par les sieuters si bref ne isoit. E ceo est par garant de jurediccion ordenaire.

Autres menues cours sunt qe les baillifs le Roi tenent en chescun hundred de iij. someins en iij. par les siutiers des fieu tenaunz des hundrez.

Autres menues courtz sunt es courtz de chescun seignur de fieu al foer des courz hundredz, e aussi en feires e marchez ou covendra hastier droit sanz delai, le quel qe les bosoignes touchent les auctours ou les defendanz solom les primers ordenaunces. En qeles courz unt conussances de dettes, covenanz e enfreinz, e en trespaz, e tieux autres peti pecchiez qe ne passent mie xl. sous ne la value. E aussi e eles[1] conoisaunce de trespas e forfeture des fieus par entre les seignurs pleintifs e lur tenaunz defendaunz ou le revers.

Trestuz les tenaunz de denz les fieus sunt obliges a celes siutes fere, e ne mie par servage des persones, mes par servage des fieus ; mes femmes, enfanz de dienz lage de xxj. an, sourz e muz, fornastres,[2] ceaux qe sunt enditez ou appelez de felonie mortele avant due aquitaunce, apertz meseaux e escomengez sunt exempz de celes siutes fere. E soit qe tieux fieu tenanz poent fere teles siutes as menues

[1] *Sic.* [2] Corr. *fous nastres.*

have it, and to seal writs and the estreats under green wax which issue from this place for the king's profit.

In this place also are chamberlains and several other officers who have not much to do with the law.

Ch. XV. Of Inferior Courts.

Those primitive assemblies [1] were the origin of the consistories which we now call courts. And these exist in various places, and are of various kinds. Of these one court is held by the sheriffs from month to month, or from five weeks to five weeks, according to the size of the districts. These courts are called counties, and in them the judgments are made by the suitors if there be no writ.[2] This is by warrant of the jurisdictio ordinaria.

Other inferior courts are those which the king's bailiffs hold in each hundred every three weeks with the suitors of the fee tenants of the hundreds. Other inferior courts are the courts of each lord of a fee held in the likeness of hundred courts, and those in fairs and markets, where, according to the primitive ordinances, justice should be speeded without delay, whether the business concerns the plaintiffs or the defendants. Such courts take cognisance of debts, covenants broken, trespasses, and such other petty sins which do not exceed forty shillings or its value. And likewise have they cognisance of trespasses, and the forfeiture of fees between the lords who are plaintiffs and tenants who are defendants, and *vice versa*.

All tenants within the fees are obliged to make suit [to these courts], by reason not of the servitude of their persons, but of the servitude of their fees; but women, infants under twenty-one years of age, deaf mutes, idiots, those indicted or appealed for mortal felony before due acquittal, open lepers, and excommunicates are exempt from doing such suit. And albeit such fee tenants can do their suits at

[1] See above, p. 8.

[2] If the county court is hearing a cause begun by writ, the sheriff is judge.

courz par lour atturnez, par atturnee neqedent nest jammes jugement rendable ne tenable pur ferm.

E si ascum plee soit menue par le bref le Roi en teles courtz, sicom de droit, de justicies, de replegiari, de naifte, ou dautre nature, cil en ad la juresdiccioun a qi le bref est maunde principalment ou par retours.

Ch. XVI. De Torns.

Les viscountes daunciene ordenaunce tenent assembles generales ij. fois par an en chescun hundred ove touz les fieus tenanz dedenz le hundred sunt obligez de venir par le servage de lur fieus, cest assavoir une foiz apres la Seinte Michel e autre foiz apres Paskes.

E pur ceo qe les viscountes a ceo fere font lur tourns de hundred, sunt teles venues appelez tourns de viscountes, ou a viscountes appent denquere de touz peccheours personeles e de totes circumstaunces de pecchez fez en ceaux hundrez, e de torz des ministres le Roi e la Royne e de torz fetz au Roi e al comun del poeple, solom les pointz avantdis es devisions de pecchez.

Trestuz feu tenaunz es hundrez ne sunt mie ore tenuz avener a tieux tourns, car li Roi Henri le tierz en allegea ascuns persones, e dist qe as tourns des viscontes nestoit mees qe erseveqes, abbez, priours, countez, barrons, gentz de Religion ne malades ne autres qe sont exempz de siutes fere, as menues courtz veignent en propres persones si lur presence ne isoit necessaire pur autre chose qe pur la veuue fere. E si ascun eit diverses tenementz en divers hundrees sa presence ne soit point[1] ne neqedent le gre le Roi.

[1] Some omission is to be suspected.

Ch. XVII. Of the View of Frankpledge.

By these first assemblies it was likewise ordained that each hundredor should cause to assemble together once a year not only the fee tenants, but all men of his hundred, strangers as well as denizens of twelve years of age and above, except archbishops, bishops, abbots, priors, and all men of religion, all clerks, earls, barons, knights, married women, deaf mutes, sick folk, idiots and lepers, and those who are in tithing elsewhere, in order to inquire into the aforesaid matters and the following articles. And the inquiry must be made not by serfs nor women, but by the oaths of twelve free men at least, for a serf cannot indict any free man, nor can any who is not receivable to make suit in the inferior courts.

And because it was anciently ordained that no one should remain in the realm if he was not in tithing and plevied by free men, it is the hundredor's duty to view once a year the frankpledges and plevies, and for this reason such views are known as views of frankpledge.

The articles are these: You shall say by your oaths if all those are come who are bound to come to this session, if all free men of the hundred or fee are there present, if the frankpledges have their dozens complete, and if all that they have are full. If all those of the hundred or fee of twelve years and upwards have sworn fealty to the king, and what persons have knowingly received those who have not done so. Of all blood sinfully shed. Of hue and cry wrongfully levied, or rightfully levied and not duly pursued, and of the names of those who did not run to it. Of all mortal sinners of all kinds, both principals and accessories. Of all persons exiled, outlawed, waived or banished, who have returned, and of those by whom they have then been received. Of those who have been condemned to death, or have abjured the realm. Of Christian usurers and of all their goods. Of treasure trove, of wreck, waif, stray, and every purpresture or occupation made against the king or his dignity. Of every wrong done by the officers of the king

autres al comun del poeple, e des *pur*prestures fetes en lu comun en *ter*re ou en euue ou aillurs. Des bondes remues a comun nusaunce. De chescun assise enfreinte de pain, *cer*voise, vin, dras, pois, mesures, trones, busseaux, galons, alnes, e tolhepes, e de totes fauses balances e qi les unt useez, e qi unt achatie *par* une manere de pois e de mesures e vendu *par* autre manere en fraude des marchanz. Des destourbeors de fornissementz des loiax jugementz, e de forjurours [1] de torcenous e des assessours e consentaunz. De chescun torcenous detenue de cors de hom*me* ou dautre naam. De chescun faus jugement done pur [2] lautre veuue el hundred ou el fieu. De chescun forstal fet el chemin comun. De tuz torcenouse vez. De totes torcenouses recousses. De chescun out*rai*ouse destresce ou en autri fieu, ou en marche pur forein contract. De tutz pontz rompus. De chaucees e de chemins connus brises e qi les doit refere. De adobbours de veuz dras demoranz hors des *gran*tz viles en lus defenduz. Des tannours e blanchours de quirs e des mainoverours. Des bochiers e queus vendauns char susseme *pur* seine e gascrue pur bien quite. De ceux qi vendent vin poeri pur sein, e cervoise crue ou rousse ou de fenes ou de cineraie pur covenable e seine. De menus larcins. Des cillours [3] de bourses. De ceaux q*e* les soeffr*ent* user eur mestier pur loiers. Des p*er*nours de thefbote. Des fesours e hantours de faus dez. Des out*rai*ours tolneours. De touz trecheors e decevours. De tuz manners conspiratours e de tuz autres articles q*e* valoir iporrunt a pecchie destrure.

Les p*re*sentemenz sunt sealables de seals des jurours si q*e* une ne i puisse fere fraude dencrestre ou damenuser. E ceo q*e* ne porra *par* ceaux p*re*sentemenz estre illoec redresce est p*re*sentable al p*ri*mer tourn de viscounte; e ceo q*e* les visco*n*tes ne purrent redrescer est p*re*sentable *par* les viscountes al escheqer.

[1] Corr. *fournissour.* [2] Corr. *puis.* [3] Corr. *cissours.*

Trestuz ceaux sur queles mortel pecchie est presente e baniz retourne e lur recettours e ceux qe ne sunt mie a la fei le Rei sunt pernables e lur biens en la main le Rei.

E tut isoit qe li baillifs ne puet oir ne terminer nulli accion a la jornee, si ascun nequedent present se sente greve par ascun torcenous presentement e senpleigne, ou si li baillif eit suspeceon qe les jurours soient en autre cas parjurs par concelement dascun pecchie presentable ou de ascun peccheour, bien list al baillifs par xij plus vaillans enquere ent la verite sanz delai. E tut seit qe les derreins jurours dient qe les primers soient parjurs por ceo neqedent qe nul tesmoign ou jurour nest atteignable de meins qe de ij jurours e pur ceo qe la derreine juree nest mie pris forqe del office le baillif e ne mie en manere datteinte, ne sunt mie les primers jurours tenables pur atteinz einz sunt simplement amerciables.

E si ascun se proffre de jurer feautie au Roi seit primes plevi de ascun franc plege e mis en disseisine[1] e puis jurge feaute au Roi, e pus li soit pecchie defendue e comune oveqe peccheours. E li soit enjoint qil soit obeissant a son chief plege.

De cest serement fere en celes veuues nest nul exempt qe soit del age de xij ans homme ne femme, clerk ne lai, forpris aliens passanz al foer del messager, ou de pelerin, ou marchaunt e ceaux qi sunt engarde.

A cestes venues de tourns e de veuues tient lu essoignes par les queles labsence de ceux qe ne purrunt estre excusable, en[2] teles essoines sunt ajornables as courtz primers suanz qe les essoinours eient lur garantz.

[1] Corr. *diseine.* [2] Corr. *e.*

LIBER II.

DE ACTIOUNS.

Ch. I. De Acciouns.

Quant est dist qe les Rois e les lais princes unt ligni-ment [1] e les corections des peccheours en eide des prelatz, e qe entant sunt il les vicaires dieu en terre, e a ceo fere unt jurediction pur assoudre les peccheours par peines e nomement ceaux peccheours qe sunt mis en lour subjectioun, mes les Rois ne poient mie nen deivent savver [2] autriz pecchiez nient notoires sanz actions de accusours, qe bien piert par lexample qe dieu monstra quant il fist [3] juge en consistoire e demaunda laccusour de la femme peccheresce. E pur ceo qe nul sei presenta contre la peccheresce e pur nous doner [4] perpetuel example qe dreit jugement ne se poet fere demeins de iij personnes, de juge, de auctour e de defendour, dist dieux a cele femme qele sen alast sanz jour,[5] de si cum point napent a juge de sei presenter pur juge e pur partie. E pur ceo fet a conoistre de actions, e queux sunt e estre purrent jugez, queux actours e queux defendours. Action nest autre chose qe loiale demaunde de son droit.[6] Et sunt iij maneres de actions, personele, reale, e mixte, e unt introductions par brefs e par pleintes en manere qe suit.

[1] Corr. *le gniement*.

[2] For *savver*, apparently in the sense of our *to save*.

[3] Corr. *se fist*.

[4] *E pur nous doner*, these words are in another hand.

[5] *Ipsi est* [illegible] *die*, the technical phrase by which an English court acquits a defendant, it tells him that his attendance is no longer required.

[6] Inst 4 6, pr : 'Actio autem nihil aliud est quam ius persequendi iudicio quod sibi debetur.'

BOOK II.

OF ACTIONS.

Ch. I. Of Actions.

When we say that the kings and the lay princes have guidance and correction of sinners in aid of the prelates, and that so far they are God's vicars on earth, and for this purpose have jurisdiction to absolve sinners by penance, and especially those sinners who are in subjection to them; yet the kings neither can nor ought to take cognizance of the sins of others that are not notorious without actions brought by accusers, as well appears by the example God gave when he constituted himself judge in consistory, and called for the accuser of the woman who had sinned. And inasmuch as no man came forward against the sinner, and to give us a perpetual example that there can be no lawful judgment without three persons—judge, plaintiff, defendant—God told her to go without day, since it does not pertain to a judge to act as both judge and party. We must therefore study actions, who are and can be judges, who plaintiffs, and who defendants. An action is no other thing than a lawful claim of one's right. There are three kinds of actions, personal, real, and mixed, and they commence by writs and plaints in manner following.

Ch. II. Of Judges.

Judges are those who have jurisdiction. All save those forbidden by law can be judges. The law forbids women to act as judges, and hence it is that women are exempt from doing suit to the inferior courts. Again, serfs cannot be judges, for the status of serf and judge are repugnant, nor can those attainted for false judgment, infamous persons, those under the age of twenty-one, open lepers, idiots, attorneys, lunatics, deaf mutes, the parties to the plea, those excommunicated by a bishop, nor criminal persons. For God himself when on earth held a consistory wherein a woman who was a sinner was to be adjudged to death, and he wrote on the ground and said to the suitors whose duty it was to judge her, 'He of you who is without sin, let him give his judgment,' thus setting an example to judges who every day take upon themselves to judge folk, and teaching them that none should take upon himself so high an office as to sit in God's seat to judge sinners when he himself is tainted with sin. Those who are not of the Christian faith cannot be judges, nor those who are not in allegiance to the king; and those who hold no commission from him cannot be justices, or have jurisdiction for the king, nor he whose power has been withdrawn, nor anyone after judgment given or after his own wrongdoing in the same cause, as is shown in the writ of right, '*Et nisi feceris vicecomes faciat*;' nor anyone after the death or removal of his warrantor if the cause has not already been begun, nor anyone whose authority is faulty, nor anyone without his colleague unless his commission authorises this. A judge commissary has only the power to judge according to the articles and within the terms of his commission and of the original writ, just as the judex arbitrarius has no authority to go outside the articles of the submission to arbitration.

Ch. III. Of Plaintiffs.

Who may be plaintiffs. Plaintiffs are those who seek their own right or another's by plaints. All save those forbidden by law can bring accusations and plaints. The following cannot accuse: lepers, idiots without guardians, children under age without guardians, criminals, outlaws, exiles, banished men, women who are waived, serfs without their owners, married women without their husbands, men of religion without their guardians, excommunicated persons, deaf mutes without their guardians, judges in causes in which they are judges, those who are not in allegiance to the king after that they have been in the realm more than forty days, save approvers, who are allowed to criminally accuse folk of their own condition in favour of the peace.

How lawful men should make plaint. They should in love admonish the sinners, *i.e.* their trespassers, to make amends to them, and if they will not, and the cause be criminal, then we must make this distinction :—If anyone seek vengeance then shall he commence his action by an appeal of felony, and if he seek compensation for damage then shall he commence his action by a writ containing the king's name, the names of the parties, the judge, the county, and the plaint or demand, if the damages or sum claimed exceed forty shillings ; if they do not, a plaint without writ suffices. And because all sins cannot be absolved by personal actions brought by plaintiffs, and thus the kings cannot feel themselves fully discharged by suits brought by others, they were wont to journey through the counties every seven years, to inquire concerning sins and trespasses of sinners, of wrongs done against them and their crown, and to the commonalty of the people, and of wrongs, errors, and negligences done by their ministers, of all false judgments, punishments pardoned or wrongfully or outrageously adjudged, of outlaws returned and their receivers, of the values of counties, honours, hundreds, towns, manors, of immoveables belonging to the king and the crown, of lands

belonging to idiots, of the alienation of fees, of offences against the common inhibitions of the king, of privileges and franchises prejudicial to the king, of paths, bridges, and roads broken, and all other necessary articles. And they were wont to do right to all men by themselves or by their chief justices, but now the kings do this by their justices commissary in eyre assigned to hold all manner of pleas. In aid of these eyres, turns of sheriffs and views of frankpledge are necessary. And those whom the good folk in these inquests indicted of mortal sin the kings used to destroy without [hearing an] answer; and this usage still prevails in Almain. But through pity and mercy, and because the frailty of man cannot abstain from sin unless it be by the grace of God, it was accorded that a person appealed or indicted should not be destroyed without giving an answer, and that the kings should not make suit save for mortal sins, the rights of the crown, their desmesne rights, wrongs done by their officers, and wrongs done against common right and common ordinances made for the common advantage, and lastly the articles of the eires.

Ch. IV. Of Guerdons.

The kings were wont to give a reward every seven years to all those who for that time had loyally served them; and others took example from the kings to give rewards to their servants, and since no man can enslave a free man against his will, so that no one was bound to serve the king or any other man against his will, save by reason of services due from his fee, or by reason of his residence and dwelling in the fee of another, certain persons are hired to serve the king at a certain amount by the year. And it is not lawful for these officers who have a fixed sum from the king to take anything from any man; but those judges who serve the king in hope of advancement may well take from the plaintiff twelve pence for the day or security for the same before the plaintiff can have audience, but not more, though there be two judges or two plaintiffs in one

action.[1] The pleader may have six pence, and a knight being witness or juror six pence, any other juror four pence, and the two summonors four pence. In the time of King Henry the First nevertheless it was ordained and commonly assented that jurors in inquests, and juries of office, as in the petty assizes, recognitions, redisseisins, certifications, attaints, and the like, should not take reward, since these inquests are made as it were by the king ex officio. And the defendants are bound to repay this money in addition to the damages if they fail in their action. And to those who sue for the profit of the king and who are not his officers King Henry the First granted the twentieth part of the profit besides their reasonable expenses. And in like manner audience is to be denied to the plaintiff if he do not find security to the opposite party to restore to him his damage, in case the plaint be wrongful.

Ch. V. Of Pleaders.

Some there be who know not how to state their causes or to defend them in court, and some who cannot, and therefore are pleaders necessary; so that what plaintiffs and others cannot or know not how to do by themselves they may do by their serjeants, proctors, or friends. Pleaders are serjeants wise in the law of the realm who serve the commonalty of the people, stating and defending for hire actions in court for those who have need of them. Every pleader who acts in the business of another should have regard to four things:—First, that he be a person receivable in court, that he be no heretic, nor excommunicate, nor criminal, nor man of religion, nor woman, nor ordained clerk above the order of subdeacon, nor beneficed clerk with the cure of souls, nor infant under twenty-one years of age, nor judge in the same cause, nor open leper, nor man attainted of falsification against the law of his office.

[1] A distinction is drawn between the judges who receive fixed salaries and those who are serving, *e.g.* as justices of assize, in hope of advancement. It is believed that a great deal of judicial work was done by commissioners who received no salaries.

Secondly, that every pleader is bound by oath that he will not knowingly maintain or defend wrong or falsehood, but will abandon his client immediately that he perceives his wrongdoing. Thirdly, that he will never have recourse to false delays or false witnesses, and never allege, proffer, or consent to any corruption, deceit, lie, or falsified law, but loyally will maintain the right of his client, so that he may not fail through his folly, or negligence, nor by default of him, nor by default of any argument that he could urge; and that he will not by blow, contumely, brawl, threat, noise, or villain conduct disturb any judge, party, serjeant, or other in court, nor impede the hearing or the course of justice. Fourthly, there is the salary, concerning which four points must be regarded—the amount of the matter in dispute, the labour of the serjeant, his value as a pleader in respect of his [learning,] eloquence, and repute, and lastly the usage of the court. A pleader is to be suspended if he is attainted of receiving a fee from both sides in one cause, or if he says or does anything in contempt of the judge, or if he fails in any of the points above mentioned concerning the exceptions which may be taken to the person of the pleader, for none may be a pleader who cannot be an accuser or plaintiff.

Ch. VI. Of Attachments.

Personal actions are commenced by attachment of the body, real by summons, and mixed first by summons and then by attachment. As to mortal sinners, the law wills no such mitigation or favour as that they shall be admonished, summoned, or distrained to appear in court, but they are to be taken in their crimes if they be notorious, or as soon afterwards as may be. And if anyone flee, then, according to the statute of Winchester,[1] the hue and cry must be pursued with horn and mouth, so that all those of one

[1] Stat. Winchester, cap. 1.

township, who are capable of following the cry, shall make pursuit to the next township. And if the fugitive be caught let him be killed, so also if he defends himself and cannot otherwise be taken. Otherwise is it in the case of felonies which are not notorious, for there the sinner, if he can be taken alive, is not to be killed without being heard to answer. And if anyone desires to complain for the sake of vengeance, or in order to drive a sinner to the salvation of his soul, let him go to the coroner of the place where the sin was done, and show his plaint in the form in which he will prove it. And the coroner shall cause it to be distinctly enrolled, and the plaintiff will thus write himself down as a homicide, because of his corrupt desire to slay his neighbour by his plaint, so that he will be judged by the *lex talionis* if he cannot prove his plaint. At the next county court after his appeal has been enrolled the plaintiff must recite his appeal and find pledges to prosecute or remain in prison until he be mainprised. And such plaintiffs may be delivered by the coroners to mainpernors, body for body, who will undertake that the appeals shall be pursued, and that the plaintiffs shall be produced in court to receive judgment whenever they be demanded, if they do not succeed in proving their appeals.

The personal sins are these: the mortal sins, imprisonment, mayhem, wounding, battery, perjury, usury, asportation of old treasure trove, or of wreck, waif, or stray, rescue, forestalment, pound breach, resistance to the execution of lawful judgments, execution of false judgments, tortious fishing, and such other venial personal sins. Attachments for mortal sins are by the body without plevin; attachments for venial personal sins are also by the body, but with plevin. The 'real' sins are those upon which are founded writs of right, of cosinage, of dower, of advowson, of entry, of escheat, of *quo iure*, of formedon, and all other feudal writs. The 'mixed' sins are those upon which are founded the writs of customs and services, of naifty, of covenant, for homage denied, for detenue of charters, *de fine facto*, of mesne, or for other acquittance, *de sectis*

faciendis, of debt and the like; and these actions are called mixed because of the mixture in the introductory process.

Ch. VII. Of those who have an Action by Way of Appeal.

The action by way of appeal is not given equally to all men; but to an action of treason anyone may be received to whom the treason is done, save those who can be received to no action. To an appeal of arson everyone may be received who was damaged and had the property in the thing burnt. To the appeal of homicide all persons connected by consanguinity, affinity, or alliance are wont to be received; but the appeal of the wife of the slain is receivable before all others. This, however, is not so with all wives, but only of her in whose arms, *i.e.* in whose seisin, he was slain, for if he had several wives and all of them were alive at the time of his death, the appeal of her whom he last held as his wife is receivable before all the others, albeit she was not his wife *de iure*; and this is because the lay court cannot try the question which was his wife *de facto* and which *de iure*; and the appeals of all the others are suspended pending the appeal which is receivable.

The appeal of the eldest legitimate son is receivable next after that of the wife. 'Legitimate,' we say, for a bastard is not to be accounted as a son, for the law accounts as a son him *quem nuptiae demonstrant*. Then after the appeal of the eldest son, the appeal of him who stands next in proximity of blood is receivable, and so from grade to grade down the straight descending line of consanguinity; and if the blood fails in that line, then the collaterals, or those connected by affinity, blood failing, were admissible, according to their places in the tables of consanguinity and affinity, and in the first place those in the paternal line, but the appeal of homicide was restrained by king Henry the First within the four nearest degrees of blood. And if anyone under the age of twenty-one years appeals, the defendant need not answer him in so high an action until he has passed that age; and therefore these appeals are to be

suspended until both parties are of full age, if the nonage be alleged in court by way of exception.

Appeals can be brought by men and women, clerks and lay, infants and others, of whatever condition they be, save those who cannot be received in any action. And if several make an appeal, one only is to be received to continue it, and pending his appeal the others are to be suspended; and in every case appeals against the accessories are to be suspended pending the appeal against the principal or principals.

Ch. VIII. Of the Process of Exigent.

At the first county court the coroner has only to enter the names of the pledges who in strictness are main-pernors, and to command that the appellees be taken, they and all their possessions and goods, into the hand of the king, as aforesaid. And if they be taken let them be kept in ward until they be duly delivered; and if they be not found and the plaintiff comes to the second county court and recites his appeal or appeals, then demand and cry is to be made for the appellees by their names, or the names by which they are best known, that they do come in to the king's peace as having been exacted a first time. For if any be appealed merely as the son of his father, and has some other known surname, then the appeal is vicious and can be abated to the plaintiff's peril.[1] At the third county court the same is done, and this is the second exaction; and at the fourth county court comes the third exaction; and if on this occasion the appellees do not appear in court, and no one has undertaken to produce them, then at the next court let judgment be given against them as contumacious by the coroners; and if they appear before a judgment given, then let them be at once delivered to gaol, where they are to be received without any difficulty as to fine or petition.[2]

[1] It will not do to appeal a man as *Henry le fiz Roger* if he be better known as *Henry de Weston*.

[2] Translation doubtful.

Ch. IX. De Gaole e des Gaolers.

Gaole nest autre chose qe cómun prisoun. E si com lepre est une maladie revillaunt cors de homme taunt qe il nest mie suffrable a demoerer entre senz genz, aussi est pecche mortel une manere de lepre qe fet lalme abhominable a deu e la del part[1] del commun de totes seinz gentz. E pur quoi les innocens ne soient mie entochez de lur pecchez ordenes furent gaoles en tuz countiez pur mettre einz mortiels pecheors dattendre illoec lur jugementz es cas ou li peccheour fussent nient notoires. Deuz maneres sunt de prisoun, commune e privee. Chescune comun prison est gaole e nul nad garde for le Roi. Prison privee est autri prison dunt chescun list deschaper qe fere le poet, savve qil ne face autre trespas en leschape. En comun prison nest nul emprisonable forqe pur pecche mortiel e de ceo fu defendu par le Roi Henri le tierce qe nul ne levast deners pur nul eschap en la terre le Roi einz ces[2] qe leschap fu juge en eire des justices le quele peine pecuniele ou corporele fust agardable ou noun. E pur ceo qe defendu est qe nul soit pene avant jugement, voet droit qe nul ne soit mis entre vermine nen puriosie nen lu orrible ne perilloutz nen euue nen oscurete nen autre peine, einz list ben a gaolers defirger ceaux dunt il se doute, sauve qe les fierges ne poissent mie plus de xij unces, e de efforcer lagard a ceux qi sunt[3] en la gaole violence, outrage ou trespaz.

Ch. X. Des Plevisables.

Ascuns appellez de mortel pecchiez sunt qe tut ne soient il meinpernables de droit, par abusion neqedent est suffert qil sunt liverables par bail einz ceux qil viegnent en la gaole, nomeement les appellez de homicidie, robberie, larcin e

[1] *et la doit parter*, Houard. [2] Corr. *ceo*. [3] Corr. *funt*.

robbery, larceny, and hamsoken, or are deliverable out of gaol, as in the case where the king finds by inquest that they are wrongfully appealed, and for this purpose the writ *de odio et atia* was invented. Those who have been condemned to corporal punishment are not plevisable or mainpernable until they have returned to the law by making a pecuniary fine.

Ch. XI. Of the Appeal of Laesa Majestas.

For the crime of laesa majestas or for falsification or for anything which touches the king's right there is no appeal, but there are actions or indictments. Because of the scandal of sodomy our ancient fathers would not suffer that there should be any actions, accusations, indictments, or audience of any kind concerning so abominable a sin, but ordained that those notoriously guilty should be judged without respite and the judgments executed, and in cases that were not notorious every tongue should hold its peace.

As to compassing the king's death and other kinds of laesa majestas against the earthly king, there are accusations, but no indictments, for every one of the king's lieges who knows thereof should hasten to show it to the king, so that he may incur no reproof by reason of his inaction or delay. And in these cases the accused are to be arrested; and then in full parliament let the accuser by himself or his serjeant follow this precedent of the time of King Edmund and say, 'Rocelin, who is here, says that Walegist, who is there, for that on such a day, in such a year, in the reign of such a king, in such a place, came the said Walegist to the said Rocelin and urged him to be in council and aid along with Atheling, Thurkild, Balbard, and others in making poison or drug to kill our lord the king Edmund, or otherwise, by a blow feloniously, and to do this were they sworn, and to conceal this counsel and to execute this felony to the best of their power.'

Ch. XII. Lappel de Faussonerie.

Cest pecchie en fet nient notoire se monstre par faus bref ou par faus monoie trovie en ascun possession. E tut soit qe iij. persones soient necessaires en jugement en cest cas neqedent dist Ordmar[1] qe possessours de mauveistie sunt doffice de juge chaceables a respoundre del title de lur possession qe nen est mie en tuz cas. E si ascun soit qe nel voille dire en jugement, adunqe iert retornable a la gaole e trestuz ces biens pernables en la mein le Rei e recevables, sicom en totes criminals accions attamez par appeals ou par enditemenz; mes en venials acciouns soloient tieux contumax estre condempnez par non respons aussi bien cum par lur respounz e lealment atteinz. E si ascun die qil y avint bien loialment e ne seit par qi, ne nul ne se profre countre li de prover laffirmative del accioun, adunqe appent al possessour a prover laffirmative de soun responz. E si ascun die qil avint par certeine homne seit cum apres jert dit.

Ch. XIII. De Apeals de Traison.

Traison se monstre par appeals en ceste manere solom ceo qe fu trove en vieus roulles del tens le Roi Alfred—Bardulf, ici, appele Dorling, illoec, de ceo qe cum meisme celi Dorling estoit lallie cesti Bardulf, vint cesti Dorling tel jour tel an e cet. e la femme cesti Bardulf durant lalliaunce porruist, ou soun seal faussea, ou tiel autre mauveiste fist. Ou issi—Hakon son pere ou soun autre parent ou seignur ou lallie celi Dorling occist. Ou issi—demoera en eide ou en counseil ovesqes Saffrei ladversaire cesti Bardulf, en plee qe toucha perte de vie ou de menbre ou de terrien honur. Ou issi—soun counsail ou sa confession descovri. Ou issi—par la ou ili devoit aver loial enroullement dendreit de tiel plee, meismes celi Derling fausement enroulla a sa desheriteson

[1] *est ordeigne* (1642 and Houard).

or otherwise to his damage. Or thus: Whereas Dorling was Bardulf's attorney in a certain cause to gain or lose before certain judges, and should have acted loyally, he lost the cause by his default, folly, negligence, or collusion, or surrendered the thing in demand, or did such other wickedness. Or thus: whereas he ought to have excused him or essoined him on such a day, etc., he allowed him to lose possession or the like by his default. Or thus: whereas he ought by law to have pronounced for him in such a case, he pronounced for him badly or gave him bad counsel on such a point.[1] And then at the end:—This treason did the said Dorling feloniously as a felon, traitorously as a traitor; if he will deny it this Bardulf is ready to prove it by his body—or as a maimed man, or as a woman, or as a clerk should prove. And albeit some think that no plaintiff is bound to show the proof of his action before a denial has been given by his opponent, nevertheless that right may be speeded this usage is suffered in the following case and in others. Suppose that a sheriff or other person surmises against a man that he is a pledge or mainpernor, and this is denied, then the plaintiff must say that the denial is wrongful, for that in such a year, on such a day, before so and so, the defendant became a pledge of his own free will, and of this the plaintiff offers suit and deraignment. But for the sake of expedition the plaintiff is allowed to put in his count the clause *And if he will deny it, etc.*, for in this way justice may be done more speedily than if the defendant gave his answer and then the plaintiff offered his proof by way of replication.[2]

Ch. XIV. The Appeal of Arson.

An appeal of arson is made in this manner: Cede, who is here, appeals Harding, who is there (add the surnames), for that whereas this Cede had a house or several houses, a

[1] Probably this refers to a pleader who fails in his duty of speaking (pronouncing) for his client.

[2] Our author is explaining the last clause of the common form of count, which seems to anticipate the defendant's answer, and so transgress the order of logic.

ble, ou un moillon defein,[1] ou autre manere des biens en tiel lu, ou issi—*par* la ou Weland pere ou *parent* cesti Cede estoit en tiel lu tel jour *ecet*, la vient celi Harding e en la dite meeson mist le fieu & le dist Weland art laenz le quel qil en morust ou noun. Ceste arson li fist celi Harding felonessement e *cet*.

Ch. XV. De lappel de Homicidie.

Del pecchie de homicide sunt les appeals tieles. Knotting, ici, appelle Carling, illoec, de ceo *qe* cum Cadi pere, frere, fiz, ou uncle cesti Knotting estoit en la pees dieu e la pees nostre seignur le Roi en tiel lu, la vient mesme celi Carling e le dit Cadi tel jour, tel an, *ecet* de une espie, ou dautre manere nomee brocha *par* mi le cors ou tiel plaie li enfist en tiel endroit del cors, dunt il estoit plus prees de la mort e plus loinz de la vie ; ceste occision li fist il en aesaut *purpense* felounessement *ecet*. Ou issi—de une hache, ou coignee, ou de pere,[2] ou de baston le dit Cadi feri en la test ou aillours, de quel coup il morust tiel jour tel lu *etcet*. Ou issi—*par* la ou mesme celi Cadi estoit feru en tiel endroite del cors de coup curable, ou tieu malon ou autre blesceure curable avoit, dunt il se mist en la cure cesti Carling, qi se dist estre mestre mire de practike, la vient cesti Carling e la gareison le dit Cadi emprist, e *par* sa folie, negligence *ecet*, tiel jour *ecet*, felonessement le occist. Ou issi—li sustret sa sustenaunce, *par* quei tel jour *ecet* li occist. Ou issi—taunt delaia sa deliverraunce a fere *par* quei il le tua. Ou issi—le pendi e felonessement loccist. Ou issi—comaunda ou envoia ou fu en leide ou en la force ou recetta. Ou faussement jugea Raghenild, *qe primerment* atteint les xij. faus jurours tesmoins qi pendirent Godrun soun mari atort *par* xxiv. jurours, *qe* pus *par* divers appeals pendi le *primers* xij. jurours. Ou issi—tant li pena pur fere

[1] *ou molin, ou fein*, Houard. [2] Corr. *piere*.

Or thus: tortured him into confessing and becoming an approver, so that he falsely confessed to have sinned where he had not sinned, and caused him to appeal innocent folk of a crime, so that it was not for want of will on Carling's part that Knotting was not adjudged to death. Or thus: Whereas this Knotting lay maimed in bed, or was so lame, or so young, or so old, or so sick, that he could not walk, there came this Carling and fetched or carried this Knotting from such a place on such a day etc., to such a pool, ditch, well, marl-pit, or desert place, and there threw him and left him without aid and sustenance, so that it was no fault of his [Carling's] that he [Knotting] did not die there of hunger and thirst. This wickedness did he feloniously as a felon, etc.

Ch. XVI. Appeals of Robbery and Larceny.

Appeals of robbery are made thus: Osmund, who is here, appeals Saxmund, who is there, for that whereas this Osmund had a horse of such a price, there came this Saxmund and robbed him of the horse on such a day, etc., or of so much money, or of such a garment of such a price, feloniously, etc., or of his two oxen of such a price, or of such other kind of chattels of such a price, etc., or received the said goods thus taken in robbery, or was aiding or otherwise consenting. Of larceny thus: Athelwold, who is here, appeals Osketel, who is there, for that, whereas this Athelwold had his goods, and in particular, etc., these goods he [Osketel] stole from him larcenously as a larcener, etc. In these actions two rights may be concerned—the right of possession, as is the case where a thing is robbed or stolen from the possession of one who had no right of property in it (for instance, where the thing has been lent, bailed or let); and the right of property, as is the case where a thing is stolen or robbed from the possession of one to whom the property in it belongs.

Ch. XVII. Appeal of Hamsoken.

Of hamsoken, appeals are made thus: Athulf, who is here, appeals Colegrum, who is there, for that, whereas this Athulf was in such a place in the peace, etc., there came this Colegrum and assaulted his said house with force and arms, and broke it in such a place, or did therein such other violence feloniously.

Ch. XVIII. Appeal of Imprisonment.

An appeal of imprisonment thus: Darling, who is here, appeals Wloc, who is there, for that, whereas this [Darling], etc., there came this Wloc and took the said Darling and carried him to such a place, and there on such a day, etc., set him in stocks or in fetters, or in other torment, or in restraint from such a day to such a day, etc. Or thus: And detained him in spite of sufficient mainprise offered for him in a case that was replevisable, or after a judgment given for his delivery, from such an hour to such an hour. This felony did he, etc.

Ch. XIX. Appeal of Mayhem.

Of mayhem thus: Umberd, who is here, appeals Maimound, who is there, for that whereas, etc., there came this Maimound running in forethought assault and with such manner of arms cut off the foot or the hand of this Umberd, or with such a staff struck him on the head, so that he broke the crown of his head, or with a stone knocked out three of his front teeth so that he maimed him. This mayhem did he feloniously, etc.

Ch. XX. Appeal of Wounding.

Appeals of wounding are made thus: Briming, who is here, appeals Olof, who is there, for that, whereas, etc., with such an arm he struck and wounded him in such a part of his body, with a wound that was of such a width and of such a length and of such a depth. This wound he gave him feloniously, etc.

Ch. XXI. Appeal of Rape.

An appeal of rape is made in this wise: Arnebourgh, who is here, appeals Athelin, who is there, for that, whereas, etc., there came this Athelin and knocked down, forced, and corrupted this Arnebourgh, against her will, feloniously, against the peace. And because it was not every rape that was accounted a mortal sin, such an appeal was not in due form unless she said, 'and took away her virginity.'

Ch. XXII. Of Criminal Sins at the Suit of the King.

There are who do not seek absolution, albeit they have sinned mortally against their neighbour. And for that the king is bound by his office to chasten them to salvation, the kings were wont to journey through all the lands of their realm every seven years to inquire in manner aforesaid. Also in aid of those eyres coroners were established, sheriffs' tourns, views of frank pledge, and other inquests, to inquire of such sinners, as has been said. But for that some were accused falsely and it is not right to put faith in slanders and the idle talk of the people, King Henry I. ordained that none should be taken or imprisoned on a charge of mortal sin until they were indicted by the oath of good men before those who were authorised to receive such indictments. And they in the first instance were to be taken, their bodies and goods, and imprisoned like appellees, and to be kept in prison until their evil repute should be purged before the king or his commissioners.

Of the crime of lèse-majesté no indictment arises, save for heresy and for renegation, whereof if any be indicted and be brought to judgment, the indictment may be proffered on behalf of the king by any one of his people in manner following, as is found in the old rolls of the ancient kings:

I say that Sebourgh, who is there, is defamed by good folk of the sin of heresy, for that she by evil art and for-

bidden miscreance, and by charms and enchantments, on such a day, etc., took from Brightwine her neighbour the flower of her ale, whereby she lost the sale of it, and in such case judgment shall not be given by less than three persons. Or thus: Nolling, who is there, is defamed by good folk for that on such a day, etc., he denied his baptism, and had himself circumcised and became a Jew, or a Saracen, or adored or sacrificed to Mahomet, in despite of God and to the damnation of his soul. This sin did he feloniously, etc. And so forth in every similar case for the king. And if he will deny it, ready am I to prove it against him on behalf of the king, as is proper in the king's case—that is to say, as one would do on behalf of an infant within age.[1] And of forgery thus: I say for the king that Wymund, who is there, is defamed, etc., for that on such a day, etc., he forged the seal or the money of the king in this wise or in that, etc.

Of treason there are no longer indictments. Of arson thus: I say, etc., that Seburgh, who is there, is defamed, etc., for that on such a day, etc., to such a house, or to such goods, she set fire, etc. Of homicide: I say, etc., that with such a weapon he struck Aiold on such a part of his body, by which stroke he slew him. The accessory degrees must be declared in their proper sequence after their principals.

Of larceny thus: I say that Cuthbert, who is there, etc., robbed such a man, known or unknown, of his horse or of other manner of goods, or larcenously stole them from him, or was assenting to the sin of such a thief whose name is known, or of such thieves whose names are unknown, by taking theftbote—that is to say, a ransom for the theft knowingly taken to allow the thief to pass on such and such an occasion, or to stop a prosecution, or wrongfully to procure his safety, etc.

[1] One of the author's favourite doctrines is 'Rex fungitur vice minoris.'

Ch. XXIII. Des Pechez personels a la suite le Roi.

Venial pecche se devise en ij. menbres; dunt lun sestent as personos, e lautre al biens. Li pecchie venial qe sestent as personos est devisable en gros pecchiez, e en menuz. E tut soit qe li Roi eit conoissance des pecchez toutz materieux, labsolucion des gros pecchiez venials personels retient le Roi a sa juresdictioun, e la conoissaunce des menuz relest il a touz francs homes qi unt court sur lur mesnee. E Athelbrus dist touz ceux estre de sa meisnee qe furent resceaunz en son fieu. E sur cele devision des pecchiez ad le Roi devisee sa pees issi qe tieux seignurages e baillifs eient le guiement de la pees es menuz pecchez.

Li pecche venial qe sestent as biens, est aussi devisable, et sestent lun menbre as biens moebles. Le primer se fourche car de xl. s. ou de xl. soudees en aval se conoist chescun qi court tient, en annoi [1] taunt soul les Rois.

Les venials pecchez personeles sont ceaux:—perjurie dunt len [2] est foi mentu ver le Roi, e perjurie des nient ministres, les pecchez mortels nent moustrez felounesse-ment, enprisonement, mahaim, plaie, baterie moustrez saunz appeals, alienaccioun de veu tresor trovie, disseisine, reddisseisine, plusours autres.

Les demostraunces des personels pecchez venials infamatoires sunt mostrables a la sieute le Roi en ceste manere: Je dis pur nostre seignur le Roi qe ci illoec est perjurs e fei mentu ver le Roi, pur ceo qe par la ou mesme cesti si est ou esteit le chaunceler le Roi, e fu juree qil ne verroit,[3] venderoit, ne delaiereit droit ne bref remedial a nul pleintif, mesme cesti a tel jour ecet., vea a tiel tiel bref datteinte, ou tel autre bref remedial, e meins ne li voloit grauntier qe pur demi marc ecet. Ou issi—par la ou il fu soun juge assigne e fu juree a faire dreit ecet., delaia droit en tiel manere ou en tiel, ou tel court sift [4] ou tel jugement, ou en tiel autre point de tele pertes ou tele peine relessa, ou

[1] Corr. *annui*.
[2] Corr. *teorit*.
[3] Corr. *luni*(?).
[4] Corr. *fist* (?). This passage is corrupt.

ment, or usurped such jurisdiction from the king and made himself judge, coroner, sheriff, bailiff, or other minister of the king without warrant. Or thus: Whereas he was chancellor of the exchequer, etc., he refused such an one an acquittance under the seal of the exchequer of a sum paid by him at the exchequer for a debt to the king, or delayed to give an acquittance from such a day to such a day, or would not give him an acquittance unless he would purchase it for so much. Or thus: For that he held such a plea contrary to the king's prohibition, and in prejudice of the dignity of the crown, whereas it belongs to no ecclesiastical judge to hold secular plea, if it be not concerning testament or matrimony, in prejudice of the king's power. Or thus: For that he disturbed the execution of such a judgment, or by wrongful negligence refrained from doing execution, or consented to the default. In such wise may charges be preferred at the king's suit for the personal torts of his ministers great and small, and also against all others who are not ministers for all torts done to the king by those who have sworn fealty to him.

Ch. XXIV. Of Venial Trespasses at the Suit of Private Persons.

Those who have actions and yet do not wish to sue for vengeance, law succours by plaints of trespass for the recovery of damages. As to trespass nevertheless, distinguish whether it be to a man's person or his chattels. And if to his person, then the person to whom the trespass is done has an action, save in the case of those who can bring no action without their guardians. And if to goods, then distinguish whether those goods are owned in severalty or in common. If in severalty, then distinguish whether the goods belong to a man or to another thing, as to the crown or to a church. If to a man, then distinguish whether to a man who is *sui juris* or to a man who is in ward. If to a man who is *sui juris*, then he has a several action. If the thing to which the trespass is done belongs to another

soit par successioun ou de conquest. Si a homme engarde, al gardein appent la sieute ou al proschein ami parent affine ou lallie, el noun ou al oeps celi qest en garde. De communs biens ne tient lu nule severable actioun. E par ceo des biens as gentz de religioun appent laction al chief de la meesoun en soun noun pur li e pur son covent, ou el noun de celi qi est en sa garde si laction soit personele veniale. E si ad difference par entre mortels actions e veniales en taunt qe en morteles appent a fere primerement suite ver les principaux singulerement e pus ver les accessoires; e en veniales actions de personels trespas appent acumprendre trestuz en une pleinte a une foiz en commun les principals, les comaundours, les conspiratours, e les autres accessoires, si qe len ne recoevre plusours amendes de j. trespass par pluralite des pleintes; nul des accessoires neqedent niert tenu a respoundre al actioun einz ces [1] qe ascun principal eit respoundu ou soit condemme par contumace.

Les personels trespas soloient estre oiz e terminez es courtz de meisme les fieus, e adunqe se firent les attachemenz par les cors des peccheours, e les soloit len retenir e mener en jugement sil ne fussent meinpris sauns offendre droit.

Li bref remedial de trespas voet seurte de suire, qe nul ne poet trover qest en garde sanz son gardein, pur ceo qil ne se pount obliger daquinter lour pleges. Si ascuns neqedent deveignent pleges de sieure en tieux cas de lur gre il sunt a ceo rescevables, mes cil cheent par taunt en damage pur noun suite, il naverent nul recoverir ver le

[1] Corr. ceo.

thing which is in ward, then the action belongs to the guardian whoever he may be, whether he has come to it by succession or by purchase.[1] If to a man who is in ward, the suit belongs to the guardian or to the next friend, by consanguinity, affinity or alliance, in the name and for the use of him who is in ward. Of goods held in common there can be no several action. And therefore for the goods of men professed in religion the action belongs to the head of the house in his own name for himself and his convent. Or the action may be brought in the name of him who is in ward, if it be a venial personal action. And there is this difference between mortal and venial actions, for that in mortal actions it behoves one to make suit in the first instance only against the principals, and afterwards one may prosecute the accessories; but in venial actions for personal trespasses one must comprehend at one time and in one plaint all in common, the principals, the commanders, the conspirators and all the other accessories, so that one may not recover many compensations for one trespass by a plurality of plaints; nevertheless none of the accessories is bound to answer to the action until some principal has answered or been condemned for contumacy.

Pleas of personal trespass used to be heard and determined in the courts of the fees on which the trespasses were committed, and in such case the attachments were made by the bodies of the sinners, and without breach of the law were they detained and brought before the court if they were not mainprised.

The remedial writ of trespass requires surety for prosecution, and this no one who is in ward can find without his guardian, because he cannot bind himself to acquit his pledges. But if nevertheless in such a case anyone will become a pledge for the prosecution of his own free will, he may be received as such, but if any loss falls upon him by reason of a non-suit, he will have no recovery against his

[1] An ecclesiastical vestment, e.g., belongs to another thing, namely, a church, which thing is in ward to the parson. So chattels may belong to the crown, and the crown is in ward to the king.

e qe nul nestoeit respondre si les actors ne eient testmoinage de loiale sute presente.

En taunt est difference par entre criminale accioun contier e veniale, qe si countor met avant paroles criminales si com felonessement com feloun ecet., en les demonstraunces de venials accions, par tant sunt les counties vicious e abateables pur ceo qe li juge nad poer par veniale pleinte terminer felonie. E en mesme la manere est countie vicious e abatable e[1] li counte se monstre par paroles sur le droit de la propriete sur plee de possessioun ou le revers. E ascuns acciouns sunt ou nul counte nappent sicom deseisine redeseisine certificacioun faus jugement e atteinde.

Ch. XXV. De Novele Disseisine Assise.

Entre les autres personels trespas ne fet mie a oblier a fere mencioun del pecchie de disseisine; dunt enprimers fet aveoir del title purquei len appele cest[2] lassise de novele disseisine.

Assise en un cas nest autre chose qe cession des justices; en autre cas une ordenaunce de un certein, ou rien ne poet estre meins ne plus par droit. Car pur les granz malices qe lem soloit procurer en testmoinage, e les granz delais qe se firent en les examinementz excepcions e attestaciouns ordena Randulf de Glanvill tele certeine assise, qe reconussaunces e jurees se feissent par xij. jurours des proscheines veisins. E issi est cel establissement appelle assise. El tierz cas est assise proprement done pur actioun en iiij. maners des ples possessoires; novele disseisine, mortdancestor, drein present, e de utrum. Mes celes assises sunt appellez petites a la difference des grantz. Car lei de fieus tut founde sur ij. droiz, de possessioun e de proprietie. E si com grant assise sert al droit de propriete, aussi sert la petite assise al droit de la possession. E

[1] Corr. *on*. [2] Supp. *assise*.

assizes are by a statute of King Edward[1] to be taken in the counties in which the fees to which they relate are situate, they are called *assizes*; or else this is because they come before a general session of justices and others; or else the name is merely a proper name for these actions.

'Novel' in the term 'novel disseisin' is opposed to ancient, for in old times the kings in their proper persons used to journey round the country to inquire of, hear and determine sins and to redress injuries, and any personal trespass previously committed which was not entered in such eyres stood over for the judgment of God. And afterwards, by reason of the multiplication of sins, the kings could not do all by themselves, and therefore they sent their commissioners, who are now called justices in eyre; and they have no power to hear and determine any personal trespass unless it was entered but not determined in the last eyre; or was done since then. And therefore a personal action which arose or a disseisin which was done before that time was ancient, but a disseisin done since the last eyre is novel.

Disseisin is a personal trespass by a tortious taking of possession. 'Tortious' we say to distinguish it from a rightful taking, which is no sin; as if I take from my wife or my serf or another who is in my ward that which is mine, or if you take what is mine and I at once take it back again, I do not sin, for I am warranted by the law of nature, since such a procedure is common to men, beasts, fishes, birds, and all other earthly creatures; but I may not do this on the morrow nor at a later time, for if I by my force take from you that of which you have had peaceable seisin, I do a disseisin to you, and do despite to the king when I distrust his justice and have recourse to force where I ought to have had recourse to judgment.

On the other hand, that which is taken from me by lawful judgment of a judge assigned, or a judge ordinary, or an arbitrator, is not taken tortiously. The word 'taking' as here used includes as well deforcement or disturbance as ejectment. Deforcement is as if one

[1] Stat. West. II. cap. xxx.

enters into the tenement of another while the true owner is at market or elsewhere, and he on his return cannot obtain an entry, but is deforced and repelled. Disturbance is as if one tortiously disturbs me in the use of a seisin that I have had peaceably; and this can be in three ways: first, if he resists distress so that I cannot distrain a tenement which is subject to my right to distrain, of which right I have been seised in the past; secondly, if tortiously he replevies the distress by the aid of the sheriff or the hundredor; thirdly, if one distrains me so outrageously that I cannot make profit of my fee nor make proper use of it, in which case a single outrageous distrainor will serve both as disseisor and as tenant in the assize. Ejectment is as if one casts me out of a tenement of which I am peaceably seised by the descent of an inheritance or other lawful title.

As to possession, note that every right is of one of two kinds: it is a possessory or a proprietary right. And because the right of property can never be determined by this assize, it is [called possessory][1] as savouring altogether of the right of possession.

The remedy by assize of disseisin is not applicable to movable goods nor to anything save what can come by inheritance, such as land, tenement, rent, the advowson of a church or of a religious house, franchises, appurtenances, and such other rights as are held perpetually for ever, or for a certain term of life or years under a contract; also it is applicable to a fee which is put in gage until such time as such an one or his heirs shall render such a sum to the tenant or his heirs.

Ejectment from a fee of a tenant for term of years falls within this assize, and such a term may have its origin in a lease or bailment or loan, or in right of a wardship by reason of the nonage of the heir, and the tenant is entitled to recover the land to hold according to the form of the contract.[2]

[1] The meaning of the text is uncertain.

[2] This doctrine, that the ejected tenant for years can bring an assize, is one of our author's heresies. By the *fee* the land itself is meant.

A tenement held in villainage is in some cases within this assize, as shall be said hereafter.[1]

Presentations to churches fall within this assize as being the free tenement of those who are ejected or disturbed in the continuance of their seisin in the matter of the said presentations, and if thereof a contract be made between a donor and a purchaser, albeit the purchaser cannot present to the church during the life of the clerk instituted by the donor, nevertheless the donor will at least be barred by his contract from presenting contrary to the form of the contract, and if he does present, then he is within this assize, and so is the bishop who institutes a clerk who has not been presented by one who was entitled to present in his own name.[2]

And into this assize fall donors and purchasers who make vicious contracts as to fees and possessions, as is the case with guardians or farmers who lease the heritages which belong to another for a longer term than that of their own tenure, to the prejudice of the lord of the property or of him to whom the reversion belongs, as is the case of those lessors who have a fee tail.[3]

And so too fall into this sin the ministers of the king and others who disseise a man or a commonalty of the franchises which they have inherited by lawful title, if it be not because of the default, abuse or negligence of those to whom the franchises belong, or of their bailiffs. Into this sin fall also all those attornies who surrender in court the inheritance or freehold of their clients, and those justices also who restore the fees to them and the tenants also,[4] for to an attorney it belongeth, not to surrender the rights of his clients, but to defend them until right judgment is given. Into this sin also fall all those

[1] See below, Book II. c. 28.

[2] All this seems to be heterodox. Was the Novel Disseisin ever applied to advowsons or rights of presentation?

[3] Our author seems to think that a feoffment in fee simple made by a tenant in fee tail would be a disseisin.

[4] The writer seems to be thinking of a case in which an attorney surrenders land in court by fine, and then takes it back as his own. The justices who take part in such a transaction are, in his eyes, disseisors.

who commit waste, exile or destruction in lands beyond what is by law avowable; also those who make assigns where the feoffment to them or to their ancestors only makes mention of heirs;[1] and this may be in two ways: either mention is made of heirs generally or of special heirs as is the case in fees that are tailed, or again the heirs may not be mentioned, as in the case of gifts in marriage.

This action can be sued by all men and all women, clerks and laymen, infants, and others of whatever condition they may be, if the law does not deny it to them.

It is denied to serfs so long as they are in ward to their lords to sue this action without their guardian, and in the same way it is denied to married women and all others who are in ward, and to those who have never held in their own name, in particular if they have been holding in the name of their lord. Law also denies the suit to those who on another occasion have retracted themselves from the same action or have released or quit-claimed their right.

And note that to retract and to subtract is not all one. A man may retract himself from two things, from his writ and from his action, but from neither one nor the other can he retract himself unless he says so openly, for by his attorney he cannot say that he does so. But every plaintiff can subtract himself either by himself or by his attorney, whether he be present in court or absent. And therefore, albeit a man will not prosecute his suit, he does not thereby retract himself from his action so as to prevent himself from having resort to a new writ and new plaint, unless he says in court that he retracts himself from the action.

Against whom this remedy is available: against the one disseisor or the several disseisors, and all those who come to their force or their aid.

[1] This seems an attempt to restore what the writer believed to be the good old law.

Ch. XXVI. De Vee de Naam.

Une accioun mixte [1] founde sur personel tresplas acerest as genz torcenousement naames qest appelle de naam. E pur quei nul ne passe [2] sa robberie ne son larcin covrir par naam, fet assavoir qe naam est, la division de naam, qe poet naamer, quant, ou de queles choses, ou naam est metable, e del vee.

Naam nest autre chose qe renable destresce. Renable destresce est a la vaillaunce de droiturele demaunde saunz autre vice car droit nanomie [3] nul outrage.

Deus maneres sunt de naam. Naam mort sicom de blez, vins, e autres tiez chateaux, e naam vif, sicom de homme, beste, e tiels vives choses. Naamer ne poet nul qi a ceo fere nen est garanti par lei, ou par especiall fet; par lei, sicom pur damage fesant, e pur dettez e contract de foreins, car foreins sunt naamables par renable destresce des biens moebles e nient somonables pur ceo qil ne sunt mie fieus tenaunz es lus ou il sunt destreinz, e si com pur dette recoveree ou conue le quel ele isse de amercient, [4] de damages, darrerages dacounte, ou dautre chose; par fet, com si vous me doignez ascun amistie [5] me grantez adestreindre en vostre fieu pur les arrerages de cel doun, ou dautre service, e obligez vos possessions qe ne sunt mie de mon fieu, en qi meins qe eles deveignent.

Quant lem purra naamer. Naamer poet lem homme, beste, e tote vif chose, taunt cum len le troet el damage e ne mie lendemein ne apres. E apres le terme del paiement

[1] *juste*, 1642 and Houard.
[2] Corr. *puisse*.
[3] Corr. *nalioee* (?).
[4] Corr. *amerciment*.
[5] Corr. *annuite* (?).

passed, and not before. And one cannot do it on every day, for on Sunday one may not distrain save for damage fesant; nor at every hour, for one may not distrain before sunrise, nor after sunset, nor by night, if it be not for damage fesant.

Where one may naam. In places or lands in the fees that are under the obligation and not within closed doors.

What goods. All goods not forbidden by law. Law forbids that one should distrain by a live distress so long as one can find in an open place a proper dead naam. Armour, plate, clothes, jewels and writings are not a proper dead naam so long as another sufficient naam can be found in a proper place. Ewes, wethers, muttons, or horses kept for riding, beasts of the plough, dogs, birds, poultry, fish or waterfowl are not a proper live naam so long as other beasts of pleasure can be found.

A naam is not to be carried, led, or driven away at the will of the distrainor. If it happen that a distrainor can find no naam save within an enclosure, in such case he may do nothing else than seal up the enclosed goods and sequester them without further violence, and if anyone breaks or forces open the seal or the pound wherein the things are sequestered, he commits a great breach of the peace and trespasses against the king and the lord of the fee and the sheriffs and the hundredors by the breach of their peace, and against the party by delaying him of his right; and for this reason hue and cry shall be made after such as do this as it would be after those who are against the peace.

Neither dead naam found in a proper place, nor live naam, may be carried or driven out of the fee, or out of the hundred or the county, nor may it be put within a place that is shut, nor elsewhere so as to prevent him to whom it belongs from inspecting it; but it shall be put in such a place that both it and he to whom it belongs will suffer the least hardship.

Then as to the refusal; of this there are two kinds: the first where one refuses to deliver a live naam on the tender

of sufficient pledge or gage, the other where one will not suffer oneself to be rightfully distrained. And both of these are personal trespasses against the peace. And therefore, if anyone be wrongfully naamed, you must distinguish whether this be done by those who are entitled to naam or by others. In the latter case an appeal of robbery will lie, or there will be speedy judgment against the distrainor as against a thief taken in the act.

But if the naam be taken by one who is entitled to distrain, then the owner must obtain a delivery of it by offering gage and pledges.

And if the distrainor who has taken the naam is guilty of a refusal, then the cognisance of this refusal belongs to the king, and the remedy by writ of replevin is applicable. But for the ease of those who are distrained and to hasten justice, Ranulf de Glanville ordained that sheriffs and hundredors should take from the plaintiffs surety to prosecute, and deliver the naams, and hear and determine the plaints of those who are tortiously distrained, saving to the king his suit founded upon the refusal.

Two matters fall within this plaint where there is a simple plaint of taking and detaining. And here there are four degrees:—(1) Where both the taking and the detaining can be avowed as rightful, as for a debt due and recovered; (2) where both are tortious, as when the distrainor cannot avow what he has done in any particular; (3) where the taking is rightful, as for damage fesant, but the detaining is tortious, as being in despite of an offer of sufficient gage and pledges; (4) where the taking is tortious, as where an enclosure has been opened, but the detaining is rightful, as for a debt that has been confessed. And no judge ordinary has cognisance of any points but these. But in case where the plea is begun by a writ, then the judge may take cognisance of the taking, while as to the detaining the remedy by way of assize of novel disseisin is applicable.

The taking and detaining are sometimes done by one man, sometimes by several men, sometimes by those who are known, sometimes by those who are unknown; and

although the takers be known, it is necessary to discover the names of the detainors, and one must form one's count and plaint according to the avowry of the person who made the distress, or, if he be not present, of his bailiff, so as either to charge the takers and the detainors jointly, or so as to charge them severally. And if the count be against both takers and detainors, it is made thus: 'Tortiously he took and caused to be taken by such a person, known or unknown, and drove or carried etc., and tortiously detains against gage and pledges, and is still seised.' Or thus: 'Tortiously detained from such to such a day, when he, the plaintiff, procured their deliverance by the king's bailiff; to the plaintiff's damage etc.' For this phrase 'he is still seised' serves only where the plaintiff has not been able to obtain a view of the naam, or where the defendant avows the goods taken as his own property.

Ch. XXVII. Of Contract.

Contract is a discourse between persons to the effect that something that is not done shall be done. And of this there are divers kinds, some of which are perpetual, such as gift, sale, matrimony, and others are temporary, such as bailments and leases. And there is a mixed kind, such as exchange, which may be for a time or may be for ever. And one kind of contract is an obligation. And for that law does not meddle with every contract, we must know who can make contracts and concerning what.

Anyone may make a contract who is not forbidden to do so by law. Law forbids one to make a contract with an enemy of the heavenly or the earthly king, or with those who are in mortal sin, or with those who are not of the Christian faith, or with outlaws or those who are waived, or with confessed felons or excommunicates, or with those who are in ward unless it be for their advantage, or with the deaf or the dumb, or with born fools, or with lunatics, or with those who are appealed or indicted of crime.

As to what matters one may lawfully make a contract.

nient defendues de droit, car de lautri droit defent dreit qe len ne face contract,[1] coment si qe lem ne pecche ne qe pecche male fei seit contenu[2] el contracts sicom usure, deseisine, blemure del cors, desheritesoun, ou autre pecchie ou vice.

Contracts sei defent al damage de la partie gaignaunt par vice, par defense, e par mellure de pecchie. Contracts sunt vicious, ascune foiz par mellure de pecchie, ascune foiz par entremellure de male fei, ascun foiz quant il se funt countre defens, e ascun fois par faus supposicioun. El primer cas cum si jeo otroi qe si jeo ne vous face tiele chose ou tele, bien list a vous ou a autre a fere de moi le peche de homicide, de plaie, denprisonement ou de deseisine ou de usure, issi qe vous me puissez demaunder u c pur x,[3] ou autre pecchie. El secund cum si jeo vous doigne ou baille ou leste, en esperaunce qe vous le me redoignez, e cel don ne me retournez ; ou si com jeo devise en testament avendre ascun de mes tenemenz pur mes dettes rendre, ou pur autre chose fere des devers,[4] e vous executours cel tenement retenez heritablement en propres us saunz fere execucion ; ou si com jeo vous vende, ou moblige, ou chaunge, ballie ou donne, ou lesse en beance de aver de vous tantost ou a termes,[5] e vous me detenez ceo qe vous me promistes.

El tierz cas, com si jeo face ascun contract as ceux qe ne list. Le contract neqedent de matrimoigne nen est mie defendu par entre enfanz coment qe estre soloit, forpris en disparagacions, car disparagacion est un pecchie grantment defendu.

El quart cas, com est de chartres e de autres manere de monumenz faus supposanz. Com est de chartres de feffement fetes en lasseisine de doneours, e de chartres de quiteclamance fetes hors de la seisine de ceux qe les unt, car nule chartre nule vente ne nul doune vaut perpetuele-

[1] A new paragraph begins in MS.
[2] *Coment que il empesche tout en quoy mal foy est contenue.* Hoeard.
[3] This seems corrupt. [4] Corr. *devers.* [5] Corr. *terme* (?).

the donor be not seised at the time of the contract in both rights, the right of possession and the right of property. And as a charter which supposes a gift to be made without a transmutation of seisin is void, so also is a quitclaim if the maker of the charter be himself in the possession of the thing that is quitclaimed. And as in these cases the charters are void, so also are the warranties and all that concerns such writings, for they have no validity because of their false suppositions.

Again, a 'simple' muniment makes a false supposition if it supposes a gift which is to return to the donor or to his heirs, or contains any other condition; for a gift is always simple, and if the gift is really a gift, the donor's intention is that the thing given shall belong to the purchaser for ever, and that there shall be no hope of a reversion. A 'simple' muniment is a writing without indenture, and therefore the law wills that all writings which contain conditional contracts and contemplate a reversion shall be indented and chirographed.[1]

A contract may make a false supposal as to homage done in fraud of the law, as if I receive your homage in respect of any other service than the service which issues from a hauberk fee [knight's fee].

The law also forbids that anyone should lease or take to farm land, or fee, or possession for any term of years beyond the term of forty years, or that any contracts should be made for a perpetual fee farm, or for any term at a higher rent than the fourth part of the annual value, and that any woman should be endowed of the advowson of a church, and that any alienation of an advowson should be made outside the blood of the owner, unless it be by a gift that is perpetual and 'pure,' and that an advowson should be partitioned among parceners, instead of remaining

[1] The author's 'simple' muniment is what we should call a deed poll. Chirographing, like indenting, is a device for proving that two instruments are 'parts' of one deed. They are written on one sheet of parchment; the word *Chirographum* in large letters is written between them, and then the sheet is cut in two by a line which runs transversely through this word.

enterement al proschein heir launcestre ou al einzneece fille, ne a nul a terme de ans, ou de vie, ne par fieu taille; car avoueison deglise est aussi com une espiritaltie qe ne soeffre nul alienacion forqe perpetuelle.

Endroit del contract de baille e daministration dautri biens e deners, bien list a-chescun ces biens sagement despendre ou folement gastir qi voet, e pur ceo savise chescun daver tieux baillifs e aministrours com il entendra tiel fieu bien sauver; e sil cheet en damage par ascun fol serjaunt ou mauveis, recte ceo a son fol contract, quant il ne prist de li suffisaunte sieurte de tote loialte e descretion; e aussi le revers; car ver celi qe nad rien ne doune droit nul recovrir ne nul remedie forqe vengeaunce. Si ascun tel baillif neqedent soit qe ne voet loial acounte rendre a soun seignur, il est a ceo chaceable par bref dacounte, qest une accion mixte sil eit par quei il soit justiziable; e sil ne soit destreignable ne fieu tenaunt e defut soun seignur e ne voet acounte rendre, pur tele inobedience court laccion mixte en personel trespas, e solom le chaunge des natures des actions se change la fourme des brefs remedials. E coment qe tieus soient par contumace banissables a anes ou a james, nen est nul utlagable, enprisonable. Einz si ascun remeint en arreragez vers soun seignur, distinctez—sil eit dust rendre soit li jugement al foer de dette atteinte, en autre case le revers.

Ch. XXVIII. De Naifte.

Une action mixte est founde sur j. personel trespas qe homme fet a autre quant len travaille franc homme pur enservir son sanc, e de li fere[1] vile condicion qest appelle de

[1] Supply *de*.

naifte. Ceste action est mixte en favour de franchise, car rerement se sustret nul del fieu soun seignur sil ne se cleime franc. Ceste action prent introduction par somonses e par attachement des fieus.

Naif nest autre chose qe serf. E tut soit qe totes creatures diussent estre franches solom lei de nature, par constitution neqedent e fet de hommes sunt genz e autres creatures enserves, sicom est de bestes en parcs, pesson en servours, e doiseax en cagez.

Servage de homme est une subjection issant de si grant antiquite qe nul franc cep nen purra estre trove par humene remembraunce. E le quel servage solom ascuns ist de la maleiceon qe Noe dona a Chanaan le filz Cham soun fiz e a sa issue, ou solom autres des Philistiens qe devindrent serfs par foer fet a la bataille qe se fist par entre David pur ceux de Isrel de une part e Golie pur les Philistiens dautre. E sicom autres creatures enserveis sunt gardables, aussi sunt serfs agarder de lur possessours. E de ceo sunt dist. E issi sunt genz serfs par devine lei e par droit de homme acceptie e par droit del canon conferme.

De Sem e de Japhet sunt issus les gentils Cristiens, e de ceux de Chaam les serfs qe les Crestiens poent doner e vendre si com lur autre chatel, mes nient deviser en testament puis ceo qe il serent ascreis [1] pur ceo qe adunc sont annex a franc tenement, e de ceux sunt puis estrix autres.[2]

Ceux sunt serfs qe sont engendrez de serfs e nez de serve, li quel qe se eit este en matrimoigne ou hors de matrimoigne. Ceux sunt aussi serfs qe sont engendrez de serfs e niez de franche en matrimoigne. E ceux sont serfs qi sont engendrez de franc home e de serve e nez hors de matrimoigne. Autre manere de serfs sont sicom ceux qi sont atteintz pur serfs par mi brefs de naifte, e lur issue pus.

[1] Corr. *autriers*.
[2] This seems to be corrupt. Read *e de puis sunt ascris a terres* (?).

Serfs devenent francs en plusours maneres ascuns par baptesme, sicom est de ceux Sarrazins qe sont pris de Cristiens ou achatez e amenez par de sa la meer de Grece e tenent cum lur serfs ; ascuns devenent francs par le mere [1] sein pere cum est de ceux serfs qi sunt ordenez de evesqe de sudeacone en amount, mes tut seit cel issi suffert pur ceo ne perdra nul soun droit qe suire le vodra, testmoin le canon meismes.

Dautre part devient serf franc si soun seignur li grant daver franc estat si com heirs en succession de sanc ou sil preigne son homage pur fee, ou si soun seignur li gette de son fieu e [2] li doune sustenaunce, ou sil le met en comune prison, si ceo ne soit pur crim. Femme aussi allegge de la possession soun seignur a franc list nest mes chalengeable pur serve tut deveigne ele vedue. E si seignur soeffre soun serf respoundre en jugement sanz li sur veniale action ou jurer entre francz a foer de franc, sachant e saunz recleim del seignur, par tant ad il excepcion contre servage, sil ne recourt de son gree. Ou si seignur enfranchist son serf par manumission ou li relest e quitecleime quanqe en li est. E aussi devient serf franc par la defaute del seignur el bref de naifte si com par noun siute de son bref. E aussi par proeve de franc cep, ou des francs parentz. E aussi par le garanter soun seignur en court, e aussi par prescripcion de tens, e aussi par defaute de proeve. E aussi par le negligence le seignur, sicom par le demoere le serf en la citee ou es demeines le Roi par un an enterement, ou sil soeffre son serf a escient estre suiter dautri court, ou estre jurour en assises e aillurs entre francs.

Si ascun serf defut son seignur reclamast franc estat, pur ceo nel purra mie soun seignur prendre hors de son fieu

[1] *le mere Saint Piere*, 1642 ; *le mérite de Saint Piere*, Houard.
[2] Supply *ne*.

pur remener, ne en son fieu pus lan, ou pus son bref de naiftie attame, einz appent al seignur qil le repurchace par cest action qest viscountal, e pledable en contie par somonses e par destresce de soun fieu. Car droit voet qe len use jugement e ne mie force.

Presentes les parties en jugement en countie e moustre laccion, li defendaunt purra dire en fourme dexcepcion qil est franc. E pur ceo qe franc estat est de plus haute nature qe servage par quei li viscounte nad poer a trier si haute excepcion par le bref de naifte, sunt tieux brefs e teles paroles suspendables iesqes a la venue des justices assignees a touz pleez en teles parties, si le Roi nen maunde autre chose, mes pur ceo ne sont mie tieus plez aiornable forqe de courte en autre.

La difference entre serfs e vileins.[1] E notez qe villeins ne sont mie serfs, car serfs sunt dist de garder sicom dist est. Ceux ne poent rien purchaser forqe al oes lur seignur, ceux ne sevent le vespre de quoi il servirent al matin, ne nul certein de services. Ceux poent les seignurs firgir, ceppir, enprisoner, batre e chastier a voluntie, sauve a euz les vies e les menbres entiers. Ceux ne devient capir,[2] fuir, ne adirer de lur seignurs tant cum iles troevent dunt vivre, ne a nul ne list de les recetter sanz le gree lur seignurs. Ceux ne poent aver nule maneres daccion ver nul homme saunz lur seignurs, forqe en felonies. E si tieux serfs tenent fieus de lur seignurs fet aentendre qil ne tienent forqe de jour en jour a la voluntie des seignurs, ne par nul certein de services.

Villeins sunt cotivours de fieu, demoranz en villnages upelande, car de vile est dit villein, de bours boriois, e de cite cetezein, e de villeins est mention fete en la chartre des franchises, ou est dist qe villein ne soit mie si griefment

[1] This stands in the margin. [2] This seems to be corrupt.

amercie qe sa gaignere ne li soit sauve. Car de serfs ne fet ele mie mencion pur ceo qe il nunt rien propre qe perdre. Et de villeins sount lur gaigneries appell villenages.

E notez qe tenenz francs e quites de tous servages devenent enserver par contractz fetz par entre seignurs e tenaunz. E sunt de fieus plusours maneres de contractz, sicom de don, de vente, de change, e de ferme, qe tous se purrent fere a tens ou a james, e quitement sanz obligacioun e charge de servage ou ovesqe charge. E ces contractz sicome tuz autres se funt par escritz, chartres e monumenz, qe fere se soloient sanz monumenz par solempne tesmoinage al foer del contract de esposaille qe deit estre mireour a touz autres contractz. A queu foer les contractz avantdis se firent par nos primers conquerous, quant les countez furent feoffez des countees, barons des baronies, chevalers des fieus de chevaler, serianz de seriauntes, villeins de villenages, burgois e marchanz des burgages, dunt ascuns recoivent fieuz assouz de chescun obligacioun sicome pur service fet, ou en pure amoigne, ascuns a tenir pur homage e service al defens del reaume, e ascuns pur villeins custumes darer, aver, charier, sarclir, faucher, sier, tasser, batre,[1] teles autre manere des services, e ascun fois sauns reprise de mangier, e dunt plusours fins sunt troveez leveez en la tresorie, qe funt mencions de tieux services e villes custumees fere, aussi bien cum autres de plus cortois services. E dunt, tut soit qe tiele gent veient[2] point de chartres ne monumenz, sil soient neqedent engetez ou destourbez de lur possessions a tort, droit les socourt par lassise de novele disseisine atenir en lestat qe devant, par si qil puissent avouer qil savoient lur certein de services e dovenengues[3] par an, cum ceux qi auncestres avant ceux furent astrers de plus

[1] Supply ou. [2] Corr. *neient*. [3] Corr. *doverraignes* [*operationes*].

long tens, *par* cas q*e* les disseisours nen furent seignurs. E de ceo se entremist seint Edward en sons tens denquere de totes les *gre*vaunces q*e* len feisoit a tel gaigneours outre lur droitz custumeez e enfist *gran*z vengeaunces. E pus *par* genz q*e* meins doutent pecche q*e* fere ne duissent, sunt plusours tieux villeins *par* torcenouses destresces chatieux[1] a fere a lur seignurs le *ser*vice de rechat de sanc, e plusours autres custumes volentrifs pur mener les en *ser*vage a lur poer, dunt lur remedie *par* le ne vexes enmorti *par* la negligence des Rois.

Ch. XXIX. De Somounses.

Cest title fet mencion de especiale somounses a la difference de somounce gen*er*al ou touz fieu tenauns e autres devient venir solom la nature de la crie ; e dunt chescun del people poet fere la somounse par co*mmon*e criee, mes de cele somounce ne fet ceste ch*apitr*e nient plus de mencioun.

Somonce especial est amiable a*m*monicion damendement de tort. E pur ceo q*e* nul nest tenu a respoundre a nuli action reale ne mixte avant somounces, fet a veoir queux pur*r*ent somondre, queux sont somonables, ou len est somonable, cu*m* loinz, a qi custages, quant de foiz, queux purrent estre somenours, e quele somounce est renable.

Auctorite de fere somoundre unt touz ceux qi unt juresdiction.

Somonables sont touz ceaux as queux lei nel defent. Nul nest somonable pur p*er*sonel pecchie ne nul q*e* nen est fieu tenaunt.

En touz lus nen est len mie somonable car nul nest somonable ne tenu a receivre somons hors del fieu del actour de la somounse, ne aillurs forq*e* el fieu appendaunt a cele court ou len deit respondre, ne en touz lus del fieu, einz soulement al tenement mis en la demande.

[1] Corr. *chaces*.

To what distance is one summonable? Not outside the fee of that court in which one is to answer.

At whose costs? At the cost of those who are the prime cause of the summons, unless the summons be to serve on a jury or inquest, such as an inquest *ex officio*, for no free man can be compelled to appear in court or to travel far at his own costs, though the law wills that every tenant be obedient to the summonses of his lord.

How many times is one to be summoned? But once for one cause, though in some cases there may be a re-summons.

Who can and ought to act as summoners? No one can be compelled to act thus save of his own free will. All nevertheless may be summoners whom the law does not prohibit if they will so to be; but women, serfs, infants, infamous persons and those who cannot be witnesses, and those who are not fee-tenants, are not good summoners.

A reasonable summons is one testifiable by two free and lawful neighbour witnesses, and made to the person in question or to his family or on the tenement that is demanded in the action, with notice of the day, place, party, judge and action, and a reasonable respite of at least fifteen days wherein to provide an answer and to appear in court. But a summons to serve on a jury or inquest need not give so long a respite.

Ch. XXX. Of Essoins.

An essoin is the excuse for a default which is due to some hindrance in the way to court, and this excuse may proceed from the plaintiff or the defendant. The law requires in every essoin that the cause of the hindrance and the name of the essoiner shall be enrolled, so that the adverse party or his attorney or essoiner may be received to traverse the alleged cause of the essoin, and if the allegation be found to be false, then the essoin counts as a default.

All those may excuse themselves who are not forbidden to do so by law.

The defendant in a personal action cannot essoin himself, nor one who has already committed a default, nor one who is present in court, nor [the defendant] in *Scire facias* nor in *Venire facias*, nor in *Recordari facias loquelam*, nor in an action for admeasurement of pasture, nor after the parties have assented to judgment, albeit the jurors have not come, nor where the plaintiff has not found surety for the prosecution, nor where the attorney is essoined, nor where one has an attorney in court unless both are essoined, nor where no summons has been testified, nor after an essoin that has not been warranted, nor can one not named in the writ or in the plaint essoin himself, except in the case of a warranty, nor one who has been resummoned in a *Mort d'ancestor* or a *Darrein presentment*, nor when the day [for appearance] has not yet come, nor when the essoiner comes too late, nor can one essoin oneself when one's adversary or one of his parceners is dead, nor if one has been adjourned *de die in diem*, nor can a minister of the king essoin himself *qua* minister, nor one who has been told to come if he pleases. No essoin is allowable if it be not duly cast, nor is it allowable to an infant within age, nor to any who is [within] ward, nor to several who have one right unless there be but one cause for the essoin.[1]

Anyone to whom this is not forbidden by law, may be an essoiner.

This is forbidden to women, infants, serfs and all who are within ward, to madmen, to excommunicates, to natural fools, to those who are judges or parties in the cause, to essoiners who on some former occasion have failed to produce their warrant or been attainted of a false delay, to criminals, to those who are not in the faith of Christ and of the king:—such as these cannot be essoiners.

There are two chief kinds of essoins. One is the king's service, the other a disturbance. (1) The first kind is divisible, for the service may be that of the heavenly King or of the earthly. One may essoin oneself as being in the heavenly

[1] Cf. *Hengham Parva*, cap. 1.

King's service in three ways: (*a*) on account of a general passage of all crusaders to the land of Jerusalem, and this essoin is adjourned in no other way than this, that the parties shall go without day, and then when the defendant returns the plaintiff can have recourse to a resummons. This essoin is never allowed to plaintiffs nor to a defendant who has received a reasonable summons before he leaves his house for the pilgrimage, nor is it allowed in a personal action, nor in any other action that does not concern the inheritance and which is not begun by a writ of right patent; nor is it allowed in an action for dower nor in an action for a burgage. (*b*) Another essoin for the service of the heavenly King is for a general pilgrimage beyond sea to the Holy Land. And this causes a respite for one year. This essoin is only admissible where the previous essoin [the crusader's] would be admissible. (*c*) The third is that for a pilgrimage to some place on this side the Grecian sea, as to Rome or to S. James [of Compostella]. And this causes a respite for one half year. And these essoins must be warranted at the next court after the terms to which they are adjourned. After resummons, there may then be the common essoin *de malo veniendi*, and so there may be after the term of the adjournment, but this common essoin can never be made before any of the three essoins just mentioned. (2) One may essoin oneself because of the service of the earthly king in two ways. (*a*) The first case is that of those who serve as soldiers, or messengers, or ministers; and this essoin is respited only from court to court or from one *dies communis* to the next, like the common essoin [*de malo veniendi*], and unless at the next court it is warranted by the king's writ, it is reckoned as a default. (*b*) The second case is that of those who serve the king being bound to the defence of the realm in respect of their fees; and in this case no day is given, but the plaintiff is told to go without day and to have the suit resummoned in its present condition when his adversary shall have returned.

These last-mentioned essoins are allowed to the

somonables as pleintifs e as defendanz, forpris en doweires dunt femme rien nad, quare impedit, drein present; ne a femmes, ne a enfanz, ne a celi qi sest pris a langour en lessoigne de mal delist, ne a fol nastre, ne a sourd e mut, ne arragiez, ne a nul qi est en garde, ou qi nest franc de sei, ne a nul atturne tant cum attorne, ne ou lessoneour conust en jugement la cause estre fausse ou qe tant vaut, ne apres nule cape ne apres destresce fete de fieu.

Apres lessoigne del service le Roi tient lu lessoigne del mal venue mes nemie le revers.

Lessoigne de destourbaunce est devisable ou de maladie ou dautre destourbaunce, cum est de ceux qi sunt pris de enemis cheminant ver la court, e issi destourbez, ou par ponz brisez ou euues desruees, ou par tempeste ou dautre renable destorbaunce, qil neunt poer de parer en jugement al jour.

Lessoigne de destourbaunce de maladie est devisable :— ou de langour qest appelle del mal delit e cele print respit par j. an, ou de maladie passant e cele ne print respit forqe al foer de lessoigne commune e cestes essoignes de destourbaunce sont essoignes del mal devenue. Ceste essoigne tient lu apres chescun somonse e resomonse generale ou especiale mue sur ple, forpris a jurours e a ceux qi sont somons pur comun prov. Mes des aiornemenz fet a destincter ; car en eire des justices est lenjornement le iij. jours ou le iiij., ou plus ou meins, solom ceo qe les lieus sunt proscheines ou lointeins, e as foreins prent cele essoigne respit par xv. jours al meins.

Lessoigne de maladie passant tient la [1] devant lessoigne del mal delit, e aussi apres lan de la langour. E ou ele tient lu devant apparaunce tient lu e apres, forprises iiij. assises, e par la ou ele tient lu es accions tenent lu es garanties.

[1] Corr. *lu*.

This common essoin is not allowable in the aforesaid cases, nor can it be allowed more than once after the parties have agreed upon a jury or inquest, nor after the parties have agreed to appear without essoin, nor when a bishop has been told to produce or cause to appear such an one his clerk; nor again where several persons claim in one right or are tenants in one right, nor to a man and his wife, nor to parceners; nor again to several persons who together make one heir, for here they must behave as if they were but one person. But if one of several parceners die without heir of his body after writ purchased and commenced, the writ is abateable for that reason, because at the date of the writ the plaintiff had no action against the other parceners who are still alive in respect of the portion that has now accrued to them. This common essoin is available to an infant who is impleaded concerning what he has acquired by purchase, as well as to one of full age. And as it is allowable to the tenant, so also is it allowable to the warrantor, where no *languor* has been adjudged. This essoin is allowable from day to day, according to the common adjournments in a writ of right, until the alleged *languor* is adjudged, unless the tenant arises from his bed before the adjudication of *languor*. But in such a case no one is entitled to leave his bed without the permission of the plaintiff, or, if the plaintiff will not give this permission, then by the king's command.

This essoin is allowable in a writ of right patent sent to the lord of the fee, and in the writ close that is used where the tenant holds in chief of the king, and in the writ of customs and services so soon as the deforceor has answered and pleaded in such a way that battle or a grand assize may be joined.

The essoin *de malo lecti* must be cast in court by two friends or messengers in the place of essoiners when the malady has turned to a *languor*. This essoin is not allowed to a plaintiff. When a *languor* has been adjudged, a day one year thence is given for appearance at the Tower of London. There can be no *languor* in a writ of right after appearance, save where battle may be joined or the grand assize.

This essoin *de malo lecti* is never allowed to an attorney, nor to a vouchee until he has warranted, nor before the tenant has cast the common essoin, nor after a *languor* has once been adjudged and observed without any arising, nor in the eyre of the justices, nor in writs of *Quo jure*, nor in writs *De rationabilibus divisis*, nor in *Quo waranto*, nor in *Consuetudines et servitia* until the court is certified that battle may be joined or the grand assize.

The essoin of supervenient malady is called *de malo villae*, and this has its place where one who appears in court on the first day is surprised by a sudden malady which comes upon him in the town in which the court is, so that he cannot appear in court on the morrow. This essoin may be cast on the second day by one essoiner, on the third day by another, on the fourth by a third. And in this case it is for the judge to receive the attorneys of those who are thus taken ill. But this essoin is only permissible in those actions in which an essoin *de malo lecti* will lie.

Ch. XXXI. Of Attorneys.

Before the suit has been moved in court by essoin or attachment or appearance of the parties no one can be received as an attorney; this is no more possible than that a suit should be removed into a higher court before the plaint or the writ has been entered; for no one can be received as an attorney in a plea which has been, or in a plea which shall be, but only in a plea which is pending. And if anyone be made an attorney while the plea is pending in the county court or elsewhere where it has been commenced by the king's writ, and afterwards the suit is removed into a higher court, the attorney is not removed by this removal; and no attorney is removable, unless the person whose attorney he is comes into court in proper person and removes him, or unless it be where one has a general attorney, for a general attorney can appoint and remove special attorneys. And no one can receive an attorney after the suit has been commenced, save the king,

LIBER III. DE EXCEPCIONS.

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BOOK III. OF EXCEPTIONS.

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4. The exception of clergy.
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6. [Exceptions to] the power of the judge.
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LIBER III.

DE EXCEPCIONS.

Ch. I. De Excepcions.

Entendue la demonstraunce del pleintif bosoigne a la partie adverse de bien respondre. E pur ceo qe genz ne sevent mie commonement totes les excepcions qe valent en respons, sunt countours necessaires qe sachent les causes avancer e defendre, par les riules de lei e des usage de roiaume, e plus sunt necessaires en endetemenz e appealx de felonie defendre qe en causes veniales. E pur eider nostre remembraunce qe chescun jour decline en obliaunce, fet adire quoi est excepcion, de sa devision, e del ordre deccepper, car assez se veut [1] pur coupable qe ne respound en jugement ou malement respound ou nient suffisalment; example si ascun vouche agarant jugement passie, tiel respons nest nient plus allouable sil ne die quel an, ou, e par devant queux juges li jugement passa, cum sil rien ne deit pur respons. E issi dautre cas.

E tut soit respons necessaire chescun neqedent nest mie dumement recevable en respons, car ascuns sunt recevables a respondre sanz tutors en totes accions, e ascuns nient si en felonies noun, e ascuns ne sunt recevables a respons sanz tutours en nul cas.

Respondre sanz tutour poet chescun a qi droit nel defent.[2] Defendu est as femmes mariez a respondre sanz lur mariz. Mes destinctez des cas: car si ele est de tenz[3]

Corr. *car ascuns rendent* (?). [2] *defent* repeated in MS. [3] Corr. *dedenz*.

for if the married woman be within the age of twenty-one, she shall in no case answer without her husband, and is not receivable except it be that her disherison or what is equivalent thereto (is imperilled) by the negligence or malice of her husband; but if she be of full age she must answer alone in mortal cases and felonies. And so it is with men of religion and with serfs and with all those who are in ward and are not *sui iuris*.

Ch. II. What is an Exception and of the order of Excepting.

An exception is something alleged by way of answer in order to delay or to destroy an action.[1] And of exceptions there are two kinds, dilatory and peremptory.

The order of excepting is this, that peremptory exceptions are the highest, for from a dilatory one may have recourse to a peremptory, but not *vice versa*. And of the dilatory some are principal and some secondary, and from the secondary one cannot have recourse to the principal. And they are here stated in part according to their various degrees in aid of our memories. And some exceptions are encounterable by replications, and these by triplications, and so on until the truth is clarified in the process of pleading so that one may securely condescend to a clear judgment.

There can be no voucher to warranty in a personal action, though averments by records or by muniments and evidence are available.

Ch. III. Dilatory Exceptions.

Dilatory exceptions are of divers kinds. The first is to the judge, and this may be of various kinds. One is to the power of the judge, and of this there are two kinds as there are two kinds of jurisdiction. One may, on the one hand, except to the king or his judge delegate that he

[1] In this instance the reading of the old edition adopted by Houard seems much better than that of the MS.

has no power to entertain the cause; such is the case where the party is a clerk, and this by reason of the Church's privilege; or, on the other hand, one may except that the judge ordinary has no power to entertain the cause because it is foreign; for none has cognisance of a deed done outside his jurisdiction, and no one within franchise has cognisance of what is done in the geldable, and no king or men of one county or one land can have cognisance of what is done in another county or land.

Ch. IV. The Exception of Clergy.

[An exception may be based] on the privilege of clergy, as if an ordained clerk brought into court before a lay judge to answer for a personal trespass and more particularly in a criminal and mortal cause, says that he is a clerk, the judge can take no further cognisance of the matter; for the Church has this franchise that no lay judge can have cognisance of a clerk, albeit that clerk himself is willing to acknowledge him as judge; and in such a case [the clerk] is to be delivered without delay to his ordinary. Nevertheless in order that plaintiffs may be able to proceed in their appeals and indictments against the accessories, it is right that the judge should at once inquire *ex officio* by the oath of good men in the presence of the clerk, whether he be guilty or no; and if he be found guilty, then he ought to be delivered to his ordinary without any difficulty, and the plaintiff can at once sue against the accessories in the king's court and against the clerk in court Christian; and the clerk, after due purgation, shall have back again all his movables and fees without difficulty.

Ch. V. The Replication of Bigamy.

Sometimes the exception of clergy may be encountered by the replication of bigamy—in this manner: 'Sir, he ought not to enjoy the benefit of this privilege, for he has forfeited it by the vice of bigamy, being one who has espoused a widow

or several wives. Note that matrimony is a kind of lawful union of man and woman by the assent of God and of good Christian folk, and as of deity and humanity there has been made an indivisible unity, so it is in matrimony, and this union of man and woman is after the form of the unity of deity and humanity, and therefore none can remain in this unity who betakes himself to plurality, but from plurality there ariseth this vice of bigamy, which drags down clerks to the level of the laity.

And note that bigamy may be committed in two ways: first, by a plurality of women, as if one espouses two or more women, one after the other's death, or one while the other is alive; secondly, by a plurality of men, as is the case of a woman who departs from unity, as, for instance, a widow who allows herself to be espoused to a second husband, whether her widowhood arises from the death of her husband or from a divorce. And, therefore, it is necessary to allege in what manner the clerk is bigamous, so that the bigamy may be tried in a lay court; but if the jurors say that they are ignorant, then a certificate about this point must come from the ordinary at the king's command, in the same manner as if a marriage had been denied.

And then, again, a clerk may be met by other replications, as if he be known for a notorious murderer and robber and a man of such a kind that the Church ought not to warrant him out of a respect for the king's peace.

Ch. VI. [*Exceptions to*] *the Power of the Judge.*

A defendant can aid himself by other dilatory exceptions against the power of the judge in this manner:—'Sir, I demand sight and hearing of the commission by which you claim jurisdiction over me.' And if the judge refuses or cannot show the commission, no one need acknowledge him as a judge delegate.

When the commission has been shown, then he may still say, 'Sir, I have no need to obey this commission, for it makes no mention of the cause in respect of which I am

brought into court,' or, 'It does not authorise you to take cognisance of such or such a point'; or he may urge that the commission is vicious, and this it may be in divers ways, as if it be not sealed with the seal of the king's chancery, for to the king's privy seal, or the seal of the exchequer, or any other seal, save only the seal that is appointed to be known by the commonalty of the people, one is not bound (more particularly in the matter of jurisdiction and original writs) to render obedience touching the laws and usages of the realm, but only in such matters as concern the king. Or it may be vicious because the seal is counterfeit or otherwise falsified, or because the king is not named in the writ or does not attest the writ, and yet is not outside his realm nor in ward; or because the writ makes mention of a summons or citation where the action is personal, or of an attachment where the action is real or mixed; or because the seal is not firm on the parchment, but can be removed and replaced at will; or because the writ was purchased too soon or too late; or because there is in it a rasure or an interlineation or a diversity of handwriting or of phraseology, or because there is false Latin; or because it is written on paper or on a forbidden kind of parchment; or because a default is found in the writ such as an omission or transposition of a word, syllable, or clause, as is the case with abateable writs; or because the king died before the writ was commenced; or because the power thereby delegated has been revoked; or because the writ states falsely the day of its date; or because the commission requires the commissioner to associate with himself some man who is not present; or because the writ has never been sealed; or because the deed was done without the jurisdiction or in such a place that the question cannot be there determined; or because the quality or quantity of the matter in debate is beyond the cognisance of the judge.

Ch. VII. Excepcion a la Persone le Juge.

Tut soit li bref convenable e li poer suffisant, uncore tenent lu excepcions dilatoires a la persone le juge, sicom est de celes persones qe ne poent estre juges.

Ch. VIII. Excepcion del Tens.

Autres dilatoires sunt del tens, de lus, de houres, des maneres. E notez iij. maneres de tenz exempz aplez, ces queux nul proces cedunt e court[1] ne jugement rendu nest estable, tut soi assentent parties. Dunt les ij. tens sunt defendu de droit e li tierz de la voluntie le Roi. Lun tent[2] contient ij. mois aust e setumbre qe sunt assignez pur cueiller les fruiz des bles. Lautre tens contient les feirez e les dimenchez qe sont assignez a festir pur dieu honurer e les seinz, les qeles festes sont cestes les jours de Noel, de seint Estevene, de seint silvestre, de la tiffanie,[3] de la purificacioun notre dame, de pasches ovesqe tut la simeine, des Roveisons qe contienent iij. jours, de Lassencion, de la pentecuste, de la Nativite de sein John le baptistre, de xij. Apostres, de seint Lorenz, de lasumpcion la mere dieu, e sa nativitie, de seint michel, de tuz seinz, e de seint martin oveqes celes festes qe touz qe qes[4] tenent festivables en lur eveschies par si qe eles soient canonizees, estre ces les jours de reliqes, de la jurciacion[5] de la mere deu e de sa concepcion e del invencion de la croiz. E notez qe de ceo qe dieu comaunda seintifier le sabbat fet atenir apres la Resureccion qe len sentefie les dimenges. Li tierz tens est deffendu par la proteccion le Roi.

Des houres purrent sourdre dilatoires, car apres loure de noune ne nutantre ne se tient nul plee estable.

[1] *nul parties sedent en court.* Houard and 1642.
[2] Corr. *tens.*
[3] Corr. *Epiphanie.*
[4] Corr. *levesqes.*
[5] Corr. *Annunciacion.*

Ch. VII. Exception to the Person of the Judge.

Albeit the writ is in due form and the power sufficient, still there are dilatory exceptions to the person of the judge, as is the case with such persons as ought not to be judges.

Ch. VIII. Exceptions founded on Time.

Other dilatory exceptions are founded on time, place, hour, manner. And note that there are three kinds of times which are exempt from pleading, during which no process runs,[1] and if a judgment be given, it is not valid, albeit the parties agree to the contrary. Two of these seasons are forbidden by law and the third by the king's will. The one season contains the two months of August and September, which are appointed for the harvest. The other season comprises the festivals and Sundays, which are appointed for feasting in honour of God and His saints, which festivals are these—the days of Christmas, S. Stephen, S. Sylvester, the Epiphany, the Purification of Our Lady, Easter with the whole week, the Rogations, which comprise three days, the Ascension, Pentecost, the Nativity of S. John Baptist, the twelve Apostles, S. Lawrence, the Assumption of the Mother of God, her Nativity, S. Michael, All Saints, and S. Martin, with those feasts which all bishops observe in their bishoprics provided they be canonised; also the day of the Relics, the Annunciation of the Mother of God and her Conception, and the Invention of the Holy Cross. And note that because God commanded men to keep holy the Sabbath day, it behoves us after the Resurrection to keep Sundays holy. The third season is that banned by the king's protection.

Exception may be taken to the hour, for after the hour of noon or by night no one can hold plea so that it will be stable.

[1] Translation doubtful.

Ch. XII. Excepcion de Somonses.

En plez de somounse purra il dire qil ne deit mie respondre, *pur* ceo qe lactour ne tient sute ne desresne nautre manere de *proeve* nad *present*, ou pur ceo qe lactour nad trovie nule sieurte a siure sa pleinte; ou pur ceo qe il ne fu point somons, ou nient renablement somons de ci qil ne recust la somonse *par* nule *franc* hom*me* ou forq*e* *par* un *franc* hom*me*; ou *pur* ceo qil en fu somons trop tart, ou *pur* ceo qil ne fu mie somons al fieu, ou *pur* ceo qil nestoit unq*e* garni sur quele chose respondre; ou *pur* ceo qil nestoit unq*e* somons ver tiel actour.

Ch. XIII. Excepcions de Vicious Countes.

Sicum briefs viciouses sunt abatables aussi sunt vicious appealx; cu*m* si appel ne seit com*mence* de dienz lan de la felonie fete, ou nient devan*t* coroner, ou nient el countie ou li pecchie se fist, ou nient en lu du. Ou *par* variance, ou *par* defaute daffermeure del appel; ou *par* omission, ou *par* inter*r*upcion; ou pur ceo q*e* lactour defailli de son appel vers autres en meme lappel.

Ascune foiz avient q*e* chose robbe ou emble eatrove en la possession de loial home ver qi le seignur de la *propetie*, ou de la possession, fet a soun appeal, cu*m* celi q*e* ne siet autre robbour ou lierre de la chose. En quel cas destinctez, car si tiel possessour troeve qi li[1] dona vendi ou bailla la chose, e cist avouue la chose sanz collusion, en tel cas est li possessour quite ou al meins plevissable jequis a la venue des justices; e issi de plusours mesn*es* ieqes al drein, e cist est tenable jesq*es* a son jugement. E q*uant* justices vendrent li p*r*imer possessour ensoit p*r*imes arresonie, e cist die coment il li avient; sil voille voucher neqedent a garant ne poet il mie, ne adire le title de sa possession a p*er*sonele

[1] *que a lui on.* Houard.

which he held possession; but, by way of voucher, he may say that he has a defender and that he came by the thing in a lawful way, *e.g.* by purchase in such a market or other place, without saying from whom, if he does not know or does not wish to say. In this case the sheriff of the place must be bidden to cause jurors to come; and if the answer be found true he will go quit, and if not he is to be condemned just as though the plaintiff had proved the felony. And if any [third] person puts himself forward and avows the thing as his own, he is not at once to be received as a party, but in the first place the cause must be tried between those who have first made themselves parties to it; and this done, let the stranger make himself a party if he pleases. And if the supposed sale took place within a liberty and the sheriff returns that he cannot execute the writ because of the franchise of such or such an honour or place, but has bidden the lord of the franchise or the bailiffs make a return and they have done nothing, then the sheriff must be told '*quod non omittat propter talem libertatem*,' but must enter and do execution. And if the possessor says that he came to the thing by the hand of such and such a man, whom he names, and that man be present, and will enter into the defence without collusion, then he shall be received to do this, and the other [the person originally accused] shall go quit. But if he [the third person] denies the alleged contract, then this affirmative and negative must be tried by battle or jury. Nevertheless, at the suit of the king, the possessor must plead his title to possession or must purge himself, for two things are necessary to us, conscience making for us and a good reputation among our neighbours. And what is said about showing title to possession holds good also when one is charged at the king's suit with having a forged writ or bad money, or stolen goods, or things that have been lost and found, or that have been mislaid, or that have strayed. And albeit that the last possessor acquits himself of the felony, nevertheless if the plaintiff proves that the thing is his as having been stolen, mislaid, or otherwise lost out of his possession, the

voet droit qil recoere sa chose sanz chescun difficultie de paiement.

Ou il purra aver excepcion dilatoire de vicious conte pax[1] variance dentre les paroles del bref e la nature de laccion e le contie, ou com sil jeit omission de mot chargeant, ou sil met mot chargeant en countie, qe ne fet mie a pronuncier en cele accion, sicom felonie en accion veniale.

E sicom li defendant ad excepcion dilatoire de vicious contie abate, aussi ad lactour replicacion ver le defendant de vicious defens. Mes pur ceo qe nul nest remanable ne jugeable pur noun defendu en apeus de felonie, suffist a chescun defendre la felonie grossement, tut nen countre il mie en son defens chescun parole moteiee en lappel. E en cas venials ou les deffendanz rien ne dient en excusacion de ceo qe lem les met sus en jugement, sunt il jugeables e condempnables com noun defenduz, e en meme la manere est en cas ou len ne se defent mie duement ou nient suffisalment.

Ch. XIV. Excepcions a Provours.

A provour purra lem issi respondre—Sire, jeo sui loial homme e a la foi le Roi e plevi de francs pleges, e cist provour est feloun atteint par sa conoissaunce e hors de la foi le Roi, e par consequent hors de sa pees, par unt il ad perdu franche voiz e defet chescun droit e chescun action, si qe il nad mie persone recevable en nule accion, nient plus qe homme utlaguie par jugement. Ou il purra dire qe il ne li deit mie respondre pur ceo qil nel appella mie en son primer appeal ou nient devant corouner. E si li provour ne sei pusse eider par ceste replicacion, adire—qe lappelle soit enditee de meme le crim, ou ne puisse dire qil ne soit en ascune manere hors de la foi le Roi, li defendant ne li iert ia tenuz a respondre, einz est liverable as francs pleges par la ou il est en diseine, ou as autres meinpernours, tant qe il soit appelle ou enditee.

[1] Corr. *pur*.

Ch. XV. Excepcion a Enditementz.

A enditemens unt lu cestes excepcions—Sire, jeo demant linspeccion del enditement par unt excepcions me purrent encrestre, ver les persons des enditours e de la manere de lenditement. Car serfs ne poent enditer nul homme. Ou sil lenditement ne seit fete par enterre duseine de francs hommes, ou par autres qe nul homme ne poent enditer, ou si lenditement ne seit seale des seals des xii. jurours ou de plus, ne recordie de justice a ceo aucternee, ou si lenditement ne face mencion de fet especial, ou si lenditement ne jert este fet de denz lan ou de creables genz e de bone fame, nest nul tenu a tel enditement respondre; ne si lenditement neist este fet des veisins de meme le countie, ne si lenditement soit general, car esclaundre general ne defame nul homme ne chace a respons, cum si lenditement soit tiel est homicide ou lierre ou mauveis, sanz dire de quel pecchie especial; car al veine voiz del people ne fet mie adoner entendement fei ne creance.

Ou il purra dire qe justices errerent pus cele felonie fete ou rien fu motie de cest fet.

Ch. XVI. Response a Traison.

Dorling, ici, defent totes traisons e felonies e quanqe est countre la pees nostre seignur le Roi. E quant a la consideracion[1] purra il dire issi—Sire, tut javeit il alliaunce par entre nous par homage en ascun tens, avant le tens neqedent qe il conte qe jeo duisse cele traison aver fete, li avere jeo rendu tut le fieu qe jeo ting de li, ou le perdi par jugement ou par disseisine qe lactour me fist, ou il meismes me assigna achevir a autre del tut. En quel cas se destrut la felonie e lactour est condempnable.

[1] Corr. *confederation*. 1642.

E q*uan*t a la consideracion[1] par serement de feautie, purra il dire q*e* cele alliaunce defist lactour ver li en tiel point ou tiel. Ou issi—cele feautie issist de fieu dunt li defendant nen est point tenant ne en demeigne ne en seignurie.

E a la liaunce de curtoisie sen purra il dire q*e* tiel bienfet ne durra forq*e* al tens q*e* passa avant le tens nomie en lappel, car unke pus ne li paie rien de tele pension ou dautre curtoisie si p*ar* jugement non e maugre soen. Ou issi—avant le tens nomie en lappel li rendi il son escrit de cele pensioun; ou la li relessa e quiteclama, p*ar* unt lalliaunce se defit. E[2] quex cas jugement se fet pur le defendaunt.

Ch. XVII. [*Del Arson.*][3]

Arson porra il dire q*e* laventure avient de mescheaunce e nient de felonie p*ur*pensee.

Ch. XVIII. Darsoun e Homicide.

Al apeal de homicide purra il dire q*e* laccion nappent mie a tele femme plentive desicom il nestoit mie occis en ces braz ne en sa seisine. Ou issi—Sire, cist actour ni ad nul accion, de sicom il jad autre plus p*ro*schein de sanc, qi ad attame son appeal e ad p*er*sone recevable a accusement; ou il purra dire qil nest mie tenu a respoundre en engleterre p*ur* fet fet hors del Reaume, si n*on* pur chose q*e* touche le droit le rei, cum de sa p*er*sone ou de son h*er*itage; nen lu privilegee ou li bref le Roi ne court nient de fet fet el forein, ne se[4] rev*er*s, ne en lu enf*r*anchi de fet fet el gueldable, ne le revers.

Ou il purra dire:—nent felonessement einz aventurousement, ou p*ar* loial jugement. Ou issi—nient countre

[1] Corr. *confederation*. 1642. [2] Corr. *en*. [3] Not in MS. [4] Corr. *le*

but as one slain while fleeing from justice, or as a notorious felon, or as one who when slain was not in the king's peace or in the king's faith.'

Ch. XIX. Of Larceny.

To the appeal of robbery or larceny he may say:—that wrongfully he makes this appeal, since he himself brought an action against the same persons venially in the form of trespass before such and such judges. And if anyone wishes to cover his larceny by avowing the goods as waif or stray, he ought to show a title to the franchise of waif and stray; but this exception may be encountered by this peremptory replication:—'Sir, such an avowry ought not to avail, for that he at once renewed this estray, or waif, or those goods that had been found, or hid them, or sold or slew the beasts in question, or put them where no view or notice of them could be had by the neighbours, whereas he ought to have published the matter by solemn cry in the neighbouring markets and churches, and displayed and kept them in a public place for a whole year.'

To the exception founded on a distress there is this replication:—'Sir, this avowry should not avail him, for he was not a known bailiff in this hundred,' or 'for he did it not in the way of distress, for he did not take the things at a proper season or hour, and he showed no warrant, but by night,' or in some other manner, 'he robbed or stole them feloniously,' &c. And in the same manner there may be a replication as to robbery done under colour of disseisin.

Ch. XX. Of Hamsoken.

To a charge of hamsoken he may say that he entered into the tenement without felony and not against the peace but as into his own demesne.

jugement e soit encopie de utlagarie, si purra il dire qil est inlaguie *pur* la chartre le Roi, ou il purra dire qe le utlaguerie ne li deit grever *pur* la reson qil ne out mie laqe xxj. an le jour del utlaguerie. E pur ceo qil nestoit mie utlaguie *pur* felonie, ou pur ceo qe la felonie ne se fist mie en tiel countie; ou pur ceo qil ne fu mie utlaguie en engleterre, ou nient en la terre le Roi ou son bref court; car utlaguerie pronuncie sur homme en levesche de Durham ou aillours en la terre ou le bres le Roi ne court nient ne greve a nul qi demoert en la terre ou li bref le Roi court, ne le revers; ou pur ceo qe la felonie ne fist mie el tens de cesti Roi, ou nient pus la dareine eire en tel countie; ou pur ceo qe li proces del utlaguerie fu fausse ou par faus garant ou sanz garant; ou pur ceo qil gust en langour de lessoigne de mal de lit; ou pur ceo qe cist est en pleine vie pur qi mort il fut utlaguie; ou pur ceo qil fu en prison le jour de utlaguerie; ou pur ceo qil estoit el service le Roi de ciel ver la terre de Jerusalim; ou el service le Roi de la terre pur commun profit del reaume; ou pur ceo qil estoit en la protection le Roi; ou pur ceo qil fu arragie de rage continuele, ou folnastre, ou sourd e mut, ou profles en religion, en quex cas sil prie destre resceu a respons, il est a ceo recevable, e fet a demander al pleintif, ou fet atrier[1] qe si nul sache dire pur quoi tel ne deit estre inlaguie qe il soit a certein jour sicom.

Trestuz presens en jugement qi necessaires e sunt e les brefs lus en audience loriginal e le commission, die li pleintif la quantite ou la qualite de sa pleinte, e li disseisour ou lur baillifs dient chescun pur sei en ceste manere—Il respont e dit pur li qil nad nul tort fet en nule disseisene ne rien nad es tenementz mis en la pleinte. E il respond en meme la manere, e issi de ceo e de autres requis[2] atannt qe ce veigne al tenant en qi noun la disseisine fu fete, e celi

[1] Corr. acrier. [2] Corr. jeçues

accused of outlawry, he can say that he has been inlawed by the king's charter; or he can say that the outlawry should not hurt him, since he had not reached the age of twenty-one years on the day of the outlawry; or that he was not outlawed for felony; or that the felony was not done in that county; or that he was not outlawed in England, or not in the land of the king where his writ runs, (for an outlawry pronounced against a man in the bishopric of Durham or elsewhere in the lands where the king's writ does not run harms no one who dwells in the land where that writ does run, and *vice versa*); or because the felony was not done in the time of the king that now is, or was not done since the last eyre of the justices in such a county; or because the process of outlawry was false or upon a false warrant or without warrant; or because he was lying sick in bed under an essoin *de malo lecti*; or because the man for whose death he was outlawed is alive; or because on the day of the outlawry he was in prison; or because he was in the service of the King of heaven on his way to the land of Jerusalem, or in the service of the earthly king for the common good of the realm; or because he was in the king's protection; or because he was mad with a continuous madness, or a born fool, or deaf and dumb, or professed in religion: in which cases if he prays to be received to answer, he is receivable, and then the question must be put to the plaintiff, or proclamation must be made that if anyone knows any cause why this man should not be inlawed, he must appear on a certain day.

When all necessary parties are present in court and the writs, the original writ and the justices' commission, have been read in their hearing, then the plaintiff must set forth the quantity and quality of his plaint, and then the disseisor or his bailiffs must, each for himself, make answer in this manner:—He answers and says for himself that he has done no tort and no disseisin, and has nothing in the tenements mentioned in the plaint. And so each one answers in the same way, until it comes to the tenant in whose name the disseisin was done, and he may answer

ou dignete en ceste manere : pleint cest a vous A. simplement, ou il dust dire pleint cest a vous A. evesqe de Londres, e aussi est des disseisours.

Ou il purra dire qe li bref est vicious, pur ceo qe li pleintif qe soul est en la pleinte, nad nule accion si non pur autre persone qe point nest nomie el bref; ou il purra estre vicious si contenu soit el bref disseisivit eum, ou dust estre disseisivit eam ou eos, ou dust estre eum ou eam ou le revers.

Contenu est el bref a tort e sanz jugement ecet., a ceo poet lem dire qe nient atort mes adroit sicom rebotant ou freschement engetaunt autri force.

E notez qe lem poet estre disseisi a tort e sanz jugement, e a tort e par jugement, com est de ceux qi sunt deseisis de lur franc tenement par justices qi a ceo fere nunt nule juresdiction, e forjugent neqedent homme estre engete de sa possession. E len poet disseisi a droit e sanz jugement cum es cas avandiz. E estre ceo a dreit e par jugement. E de ceo sourdent excepcions; issi nient sanz jugement mes par jugement, e ceo poet estre ou par jugement des juges commissaires, ou de juges ordenaires cum sunt sutiers.

Dautre part purrent briefs estre vicious par mesprison des nons des villes, com si hamelez soit nomee pur ville, ou si la ville ne soit adroit nomee, ou si la ville ne soit destincte ou ij. semblables nons de villes sunt en j. countie.

E de cel mot pus le terme purrent sourdre excepcions cum si ne mie pus le terme.

Destresce purra il avoer pur arrerages de pension ou de especial obligacion, sauve qil neit fet nul tort. ou pur ceo qe autre brief de meme laccion est uncore pendant entre meme les parties. Ou il purra dire qe a tort se pleint

thus: '*A.* complains to you,' whereas in this case he should have said '*A.*, Bishop of London, complains to you'; and so it is with the names of the disseisors.

Or he may say that the writ is vicious, for that the plaintiff who is named in the plaint as sole plaintiff has no action unless it be in right of another who is not named in the writ; or because the writ says 'disseisivit eum,' where it ought to have said 'disseisivit eam' or 'eos,' or that it should have said not 'eam' but 'eum,' or *vice versa.*

And the writ says 'injuste et sine judicio'; and to this one may say 'not wrongfully, but rightfully as one who was repelling the violence of another or making a speedy re-ejectment.'

And note that one may be disseised 'injuste et sine judicio,' or 'injuste' but not 'sine judicio,' as is the case of those who are disseised of their freehold by justices who have no warrant to do this, but nevertheless adjudge that a man be ejected from his possession. And one may be disseised 'juste' but 'sine judicio,' as in the cases [of speedy re-ejectment] mentioned above. Or again it may be both 'juste' and 'per judicium.' And out of this exceptions may arise; thus—'not sine judicio but per judicium,' and this may be by the judgment of judges delegate or of judges ordinary, such as are the suitors of a court.

Again, a writ may be vicious because of the misnomer of the vill, as if a hamlet be called a vill, or a vill be not rightly named, or if the vill be not distinguished where there are two vills of the same name in one county.

And an exception may arise out of the words 'infra terminum,' if the disseisin took place before the term of limitation.

A distress one may avow as having been made for the arrears of a pension or under an obligation by specialty, but with the saving clause that one has done no tort. [And an exception may be taken] because another writ in the same action is pending between the same parties. Or the tenant may say that the plaintiff complains wrongfully, because

desicom a sa pleinte demeine perdi meme le tenement par loial jugement vers meme le tenant, ou de sicom il ad relesse e quiteclamie tut son droit ameme le tenant ou autrement[1] ratifie son estat, ou pur ceo qil se retret autrefoiz de sa accion par devant tieux juges.

En eides des memoires des genz sunt escriz, chartres, e monumenz mout necessaires pur tesmoigner les conditions e les poinz des contracz par lestatut Leuthfred,[2] qe ordena qe len put defendre ledenges diz e contractz des suz estuz, e miz par sa lei.[3] E qe actours prouassent lur escriz ou lur chartres dedites e nient prouables par jurours en engleterre, por foreinz contractz ou de lus enfranchis ou aillours, ou le bref ne court nient par copie e collacion de autres seals, ou par jurours ou par bataille solom laccion des actours.

Pur doner matire e voie a excepcions en eide de responeurs, bon est assavoir le terme e la limitacion des accions e des pleez, par si qe pleez preignent fin, e pur ceo furent ordene prescripcions e usucapcions. Dunt Thurmod ordena qe accions criminales a siure vengeaunce cessent a la fin de primer an, si avant ne soient attamez, e meme le terme assigna il en accions de wrec, weif, estrai, e de chose perdue, car as veillanz soulement eide droit. En personeles accions veniales dona il le terme pus la derreine eire en teles parties, en reales accions e mixtes dona il xl. ans de terme. Al Rei neqedent quant al dreit de la coroune ne a franc estat, ne poet nul tens encourre.

Al accion daccounte purra il dire qil nestoit unqe soun recevour, ne administrour de ses deners ne de ces biens, dunt il li soit tenu dacounte rendre, e qe il recust de li sous le title demprumt e dunt il li fist escrist de rendre a termes certeines. Ou issi—tut fut il son recevour ou administrour

[1] *ou autrement* occurs twice in MS.

[2] *d'Alfred.* Houard.

[3] *que l'on voit deffendre dits et contracts des cas et moyens par sa ley.* Houard. Perhaps *estus* should be *escris*; but we are unable to restore this passage.

in France or elsewhere out of the realm or within some franchise, he is not bound to render an account in this realm, or where the king's writ runs, or in the geldable, and *vice versa.*

Or one can say that the writ is vicious because of a false supposal, in that it falsely supposes the defendant to be a fugitive and also no fee tenant within the bailiwick of him to whom the writ is sent. Or again, that he is not bound to account, for that one was only the plaintiff's receiver from hand to mouth and rendered daily account of daily receipts, or spent and bought nothing save under the eyes of the plaintiff or of his folk. Or, for that the plaintiff is seised of the tallies and rolls and all that would enable the defendant to render an account. Or, because the defendant has an acquittance. Or, because he never was guardian of the plaintiff's inheritance as being the plaintiff's guardian, but was guardian of the thing as of his own proper thing during the time in question as he to whom the wardship of the fee belonged by right, whether that fee were socage or otherwise.

In an action of naifty, the defendant may say that he is free, and if he proves this now or on another occasion by writ *de libertate probanda*, then he is quit for ever from all claim on the part of the plaintiff, unless some reasonable exception encounters him. And as to the seisin of villain services, he may say that these services he did wrongfully and under the extortion and duress of the plaintiff and his bailiffs, or by way of the services due from the villainage or villain fee that he held of the plaintiff, and not by reason of any serfage in his blood. And note two things: first, that if the defendant can show a free stock among his ancestors at his conception, or his birth, or afterwards, he is accounted a free man for ever, although there be present his father, mother, brothers, cousins, and all his kindred, who confess themselves to be the plaintiff's serfs and testify that the defendant is a serf; secondly, that long tenure of villainage will not make a serf out of a free man any more than long tenure of a free fee will make a free man out of

a serf, for freedom is never destroyed by prescription of time.

Proofs of controverted statements are given in divers ways, sometimes by record, sometimes by battle, sometimes by witnesses, sometimes by the confession of the adverse parties.

(i.) By record, as if the parties have assented to some enrolment, or to the award of some judge ordinary or delegate.

(ii.) By battle, for this usage is held for law in England by the warrant of our Lord God in the matter of the battle joined between David on behalf of the people of Israel of the one part, and Goliath on the part of the Philistines of the other part, so that proof in cases of felony and in other cases is made by combat. But there are distinctions to be drawn according to the diversity of actions, for as there are personal and real actions, so there are personal and real combats—personal combats in personal actions, real in real. And these combats differ thus: in personal combats for felony no one can fight for another, though in venial personal actions it is lawful for a plaintiff to do battle by the body of a lawful witness; but in the case of real combats, because no one can be a witness on his own behalf and no one can be allowed to deraign his own real right, it is right that such combats should be fought on the plaintiff's part by a witness, but a defendant may nevertheless defend his own right by his own body or by the body of a free man of his. And there is this further difference that in appeals no one can fight in the stead of another, but in real actions it is otherwise, for if a mischance happens to one of the parties so that he cannot fight, his eldest legitimate son may do battle for him.

Combat is a battle between two men, and this suffices to prove the truth, in that victory is accounted proof. Battles are joined in other cases besides felonies, for they are used for the attainting of various falsehoods, for if anyone has done me any falsehood in deed or in word, and if this is appealed or impeached in court, then if he denies it, I can

prove against him by jurors, or by my body, or by the body of a witness. And if my complaint be of a false judgment given by more than one, then I need prove this only against him who pronounced the judgment on behalf of the court. And so if you deny your gift, bailment, sale, pledge, writing, seal, or other contract or speech or deed said or done by you.

Nevertheless we must draw a distinction as regards the quality of causes, for, as already said, in appeals of felony no one can fight for another, but in venial cases, although one be slain in the battle, for all that no homicide is considered to have been committed, but those who are vanquished or their clients for them are wont to render to the vanquishers sixty shillings in the name of 'recreancy' and a halfpenny for a purse to put this money in, and besides this there is judgment against the principal. In a case in which battle cannot be joined and there is no witness, men used to have recourse in personal actions to the miracles of God, in this manner:—if the defendant was a woman or of such condition that battle could not be joined and the plaintiff had no witnesses to prove his case, then it was at the election of the defendant to purge his fame by the miracle of God or to concede the proof to the plaintiff. And in the reverse case [where the plaintiff could not fight] the proof [by ordeal] belonged to the plaintiff only. On the day of the proof or purgation, after the benediction and malediction by the priest robed in his mass vestments, and after the oaths of the parties, the practice was to keep the party in ward[1] and to place in the middle of his hand a piece of red-hot iron, in case he was a free man, or if he were not a free man then to put his hand or foot in boiling water—or something else that it was impossible for him to do without a miracle of God, and if he suffered no harm, the adverse party remained as one attainted. But holy Christianity would not suffer that God [should be tempted thus if it could be avoided[1]].

Battle cannot be joined between all folk, for it can only be joined between 'peer-equals,' nor even between all peers,

[1] Translation doubtful.

for not between father and son, nor between women, nor infants, nor clerks, nor kinsmen by blood or by affinity. Men and women are not 'peer-equals,' nor a holy man and an excommunicate, nor a Christian and one who is no Christian, nor a sound man and a leper, nor a man in good estate and a mad man, nor a sane man and a born fool, nor a whole man and a maimed man, nor a man and a child, nor a clerk and a layman, nor a man professed in religion and one who is secular, nor a loyal man and a felon, nor a man who is in the king's faith and one who is not, nor lord and tenant or servant.

Battle also may be prevented by the triviality of the thing that lies in debate or demand, or by many other reason as appears in the law of fees; but nevertheless if those between whom battle does not lie wish to fight and battle is joined between them, this is no injury to them; and if a man offers to fight armed and was not originally tendered as a champion by either of the parties, and the adverse party craves judgment of his opponent's default as having tendered a witness who offered to deraign the matter and now tenders to furnish the battle by another who has not previously been seen or heard in court, and who therefore cannot fight or furnish the battle, then this exception must be tried as one that is peremptory of the action, if the parties will demur on this point.

Ch. XXIV. The Oath of Battle.

After battle joined and adjourned, when the parties are present and duly armed, the defendant shall swear in the first place as follows:—Hear this thou man whom I hold by the hand, who hast thyself called N. by thy right name of baptism, never did I slay such an one thy father—or never did or said such a thing on such a day, &c.—so help me God and the holy Gospels.

Afterwards the plaintiff shall swear thus:—Hear this thou man whom I hold by the hand, who hast thyself

called J. by thy right name of baptism, that thou art perjured, for that on such a day etc. feloniously didst thou slay—or, saidest or didst such a thing etc.

Ch. XXV. The Order of Combat.

The oaths having been taken, it must be observed that the parties, of whatever condition they may be, whether knights or others, are armed according to the ancient usage. The ancient usage as to armour in all sorts of battles is this: the bodies shall be armed without iron, horn or whalebone, and the heads, necks and hands shall be bare, and the reins, thighs, legs and feet shall be armed with leather, and each shall have a shield of leather and a horned baton of a certain length.

The plaintiff shall come to his post facing the east, and the defendant facing the west, and at their posts they shall swear that they have not on them any charm or deceit, and that they have eaten, drunken and used nothing whereby the truth may be disturbed or abased or the law of the devil exalted, so help them God and the holy gospels. After this a cry shall be made that none do disturb the battle by deed, cry or noise, upon pain of corporal punishment. And thereupon they are to begin their strokes, and if the defendant can defend himself until the sun goes down and craves judgment of the plaintiff's default, in that case judgment is given for the defendant. And if fraud be found in one of the parties, as a privy weapon or other unallowable thing, and his adversary craves judgment of the fraud, then they shall at once be separated and judgment shall at once be given. And if the vanquished confesses his sin in the hearing of the people, or says the horrible word 'craven' in sign of his recreancy, or his left foot be disarmed and uncovered in sign of his recreancy, judgment is at once given upon the principal matter.

Ch. XXVI. Exceptions in cases of Personal Trespass.

As to personal trespasses this exception is available: 'Sir, wrongfully he impleads me for this trespass, for he himself impleaded another or others before such and such judges at such a place for the same trespass and said nothing of me in his plaint; and forasmuch as he recovered by judgment full damages against those who were thus named in his plaint, and now is only bringing this suit against me to recover damages, and law will not concede that one should have double damages for one wrong, I crave judgment of his action.'

As regards alienations and occupation of the royal franchises belonging to the dignity of the crown, there can be no voucher to warranty, nor demand of a view, nor reliance on a title by prescription, for as regards these dignities no one can aid himself by the exception of long prescription, but such avowries of long continuance are rather to be reckoned as persistence in wrongdoing than as lawful exceptions, since no time runs against the king in his franchises, but the king is treated in the likeness of an infant who cannot lose [by negligence]; so that it behoves every person to excuse himself for his own personal trespass against the king or another in occupying a franchise; and this he may do in two ways: either he may allege that his ancestor whose heir he is died seised, so that he has used the franchise as a thing annexed to his fee; or he may allege that he from whom he purchased his fee was seised of this franchise as annexed to that fee so long as he was in possession. But this exception is encounterable by this replication:—'Sir, by this avowry he cannot shield or excuse himself, for albeit such a one his predecessor was seised, he could not alienate such a franchise, for kings never make feoffments in such wise that their feoffees can make assigns.'

Ch. XXVII. Of Purprestures.

As to purprestures, if the defendant can excuse his tort, he need not answer without writ, any more than to an action for franchises, or to an action founded on some wrong done by him in respect of land or fee or appurtenances against some one other than the king, not even at the king's command unless it be in the king's presence. And if the original tort [of purpresture] was not the deed of the defendant, then there may be voucher to warranty.

Ch. XXVIII. Of Treasure Trove.

An alienation of treasure trove one may avow if one has privilege or authority in the matter, or one may say that oneself put the treasure where it was found, or some one else within time of memory, so that the king has no action.

Ch. XXIX. Of Wreck.

In an action of wreck he may say that the king has no right, for that the year given to the other [*i.e.* the owner of wrecked goods] for his action, is not yet passed; and so with waif, estray, or other goods lost and found; or, for that the man to whom the goods belonged is known and alive; or, for that the goods were taken far out at sea and were not thrown on the land by the tide.

Ch. XXX. [*Of Usury.*]

To a charge of usury he may say that although he lent his corn in the winter and was to receive in September the best price that could have been obtained for it during the mean time; or, although he lent his money and was to receive for it the best return [1] by the year—for all this, he was no usurer.

[1] Translation doubtful.

Ch. XXXI. Of Hunting.

To actions for hunting, coursing or fishing he can say that he has done no injury, because it was his right to hunt and course there, or because it was his common fishery appendant to his fee in such a place.

Ch. XXXII. Of Obligation.

As to obligations, he can say that although this obligation is his deed, it cannot charge him, being one that is vicious, or founded on a false supposal, or because he has received no penny or other thing by way of equivalent, or because of an intermixture of sin or bad faith, as has been said above about contracts that are abateable as vicious; or he can allege payment or quit-claim, or a later contract.

In a case of waste [he may say] that he has done nothing which can be adjudged waste, or that he has taken nothing beyond reasonable estovers for his housebote and haybote, or he may claim a fee in the tenement by some lawful title.

Ch. XXXIII. Of Attaint.

If either party say that the jurors in any jury have made false oath, the law will succour the plaintiff by an action of attaint, which must be taken before twenty-four jurors, so that each false witness may be attainted by two jurors. In which case if the first jurors [contest the falsity of their oath], it behoves the plaintiff to have present under the seal of the king, or of the party, or of the judge, the process of the plea and to say in what particular they swore falsely; or else the tenant may say that the plaintiff should not be answered in this attaint because the former judgment has not yet taken full effect, because the principal matter in whole or in part, or as regards the satisfaction of damages, has yet to be executed. Other exceptions there are which go to challenge the persons of the jurors, as will appear in the following chapter.

Ch. XXXIV. The Order of an Attaint.

For that it is the plaintiff's duty to prove his action, and the affirmer must prove his affirmative, not the denier his negative, and according to the word of God two proper witnesses are sufficient for every testimony, our usages decree that the affirming party shall by the aid of the court cause to come the fittest of the neighbours as witnesses, so that a jury may be formed of at least twelve men, as has been ordained by an ancient assize, and if two of these men are by the full verdict of themselves and the other jurors, or (in case all the jurors are not of one opinion) then by good examination of all the jurors, found to be fit witnesses,[1] this is sufficient, and if this be not so, or if the jurors say quite generally that they know nothing or are in doubt, or if they do not find expressly against the defendant, or if they find for the defendant, in such cases judgment must be given against the plaintiff, since he has not proved his assertion. And although the defendant may wish to have recourse to some other defence, he is not to be received to this.

Challenges may be made against jurors, as against witnesses, in this manner:—'Sir, such an one is not a fit juror, for he is one of those who indicted me of mortal crime, so that if I was not destroyed I owe him no thanks for that, and thus he is my mortal enemy:' or some other cause of enmity may be named—or 'because he is excommunicate or indicted or appealed of mortal felony;' or, 'because he is not in the king's faith—or, has been previously attainted of a false oath, or of false witness—or, has suffered such and such a corporal punishment through his sin—or, is otherwise infamous—or, is the familiar, the cousin or kinsman of the adverse party or connected with

[1] This is the only translation that we can give without suggesting large emendations. The author, who has just referred to the canonical rule about two witnesses, seems to require that there shall be among the twelve jurors two men who are proved, by the opinion of their fellows or by an examination made by the judge, to be witnesses of the fact in dispute. But the passage may be corrupt.

him by alliance or affinity—or, is a serf or otherwise in ward—or, is [hired] or procured by or the tenant of my adversary—or, is a woman—or, was outlawed or has abjured the realm—or, has procured himself to be on the jury—or, is within age, or lunatic or frantic.' And many other exceptions by way of challenge are allowable, and if these be denied, the challenge shall be tried by fit and proper jurors, and according to this trial the juror shall be received or repelled. And if for want of jurors a jury cannot be taken at one time, it must be taken at another.

Ch. XXXV. Of Oaths.

Oaths vary in divers ways. The chief is the oath of fealty which is annexed to every homage issuing from a fee, and sometimes the oath of fealty issues from a residence or dwelling on the fee of another, and sometimes from a retainer in the service of another. The oath of fealty is in these words:—'I will bear faith to such a king of life, member and worldly worship against all those who can live and die, from this day forward, so help me God and the holy gospels.'

Ch. XXXVI. [*Of Homage.*]

Homage is done in these words:—'I become your man of such a fee,' so that the quantity of the fee be expressed and specified and certain, and the lord may know how much and in what manner he must warrant to his tenant, and to how much he obliges his fee by the warranty, and the tenant may know for how much he becomes his lord's man.

Ch. XXXVII. [*Fealty annexed to Homage.*]

The oath of fealty annexed to homage is in these words:—'I will bear faith to such an one (naming him) of life and member etc. so long as I shall be his tenant, against all those etc., saving my faith to the oath that I have

made to such a king.' And if I have already sworn fealty to others than the king, then I must say thus:—'saving my faith which I have sworn to the king and to my other lords.' And if homage is to be done to the king or to another to whom the tenant has already sworn fealty, it is needless to swear fealty again, unless the alliance has been broken for some cause or another.

Ch. XXXVIII. Common Oaths.

Common oaths are made in these words:—'I will speak truth of that which you shall ask of me about such a matter, so help me God etc.' Oaths in assizes are made in these words:—'I will speak truth concerning the fee of which I have had a view by the authority of this assize—or, concerning the fee about which this action of redisseisin is summoned—or, of the pasture and fee—or, of the nuisance, wall, ditch, pond, water-course, church, rent—or, of the fee burdened with the right in question—and for naught will I let to tell the truth etc.'

The words 'of life and member and worldly worship' mean that he will never assent that the king or his other lord shall have damage in life or in member, or that his honour shall in any wise be diminished in power or fame.

Ch. XXXIX. Of Accords.

No law forbids peace and accord, and therefore everyone may agree with his adversary and release and quitclaim his right and his action. Nevertheless, so soon as one has affirmed and entered a personal action which imports infamy, he cannot make peace without the leave of the judge, though he may 'subtract' himself from his action, for every plaintiff in an action that imports infamy, if he does not attaint his adversary according to the words of the plaint that he has raised, may be adjudged infamous, just as his adversary would have been had he been attainted. However, in order to save from death men who are not

mort qi nen est mie atteint de pecche mortel est suffert qe adv*er*ses p*ar*ties sacordent apr*es* batailles gagees, lune des p*ar*ties neqedent remeint infamis.

Apeser ne poet nul q*e* ne seit del age de xxj. an ou de plus, ne nul q*est* en garde, ne nul p*ar* attornee. En garde sunt serfs, fe*mm*es espouses, p*r*offes de religion, enfanz dedenz lage de xiiij. ans, heirs foxnastres, heirs sourz e muz, heirs meseaux, e ceux qi sunt en p*r*ison e p*ar* meinp*r*ise, e fem*m*es q*e* sunt en la garde de lur avoe en qi mariages eles sont.

BOOK IV. OF JUDGMENT.

1. Of judgment.
2. The order of judgment.
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4. Of punishable defaults.
5. Of defaults.
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15. Of arson.
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20. Of the office of justices in eyre.
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LIBER IV.

DE JUGEMENT.

Ch. I. De Jugement.

La flur e la necessaire de lei depent en seint jugement, sanz quel lei ne poet prendre effect ne due fin. E pur ceo fet descendre as jugemenz, qe ne sunt mie en tuz poins ici solom la reddour del veil testament e les usages uses par Moisen e les prophetes avant la incarnacion dieu, eins isunt solom mitigacion e la temprure de grace e de verite de merci e de dreit, qe dieu memes usa en terre e comanda de user el nouvel testament e qe ces apostres e lur successours unt usez pus sa incarnacion en ca, e solom les jugemenz des auncienes sages en pleez tochanz les usages de cest reaume.

Ch. II. Ordenaunce de Jugement.

Jugement vient de juresdicion qest la plus grant dignite qe apent al Roi, e sont ij maneres de juresdiccion ordenaire e assigne. Ordenaire ad chescun si pecchie ne la li toille, car chescun poet juger son proene solom les seintes riules de droit. Mes cele juresdiccion est ore restreinte par poir des Rois, en tant qe nul nad poer a tenir plee des trespas ou de dette, qe passe xl s. forqe le Roi, ne nul nad poer a conustre de fieu sanz bref; a chescun neqedent list doccire les mortieux peccheours ou les troez a meinoevre fesanz lur pecchie par bon tesmoignage, par garant de juresdiction

and this is warranted by his ordinary jurisdiction, be the sinners clerks or lay, within age or over age, and all others of whatever condition they be. In such cases the sins are called notorious sins. Of notoriety there are two kinds—notoriety in fact, and notoriety in law. Notoriety in fact: this is where no denial is possible and there is need of no jury by reason of the testimony of the people. Notoriety in law: this is where the sinners are attainted of their sin by confession or by jurors who bear testimony, or otherwise in court. Jurisdiction of this kind no one can claim by assignment.

Assigned [or delegated] jurisdiction is that which the king assigns by the commissions of his writs, for without writ he cannot lawfully assign any jurisdiction, unless it be in the presence and with the assent of the parties. No one can assign jurisdiction but the king, and he may do this because he is not able to bear without assistance the charge that belongs to him for the punishment of the trespassers and the absolution of the sinners whom he has to govern. And therefore our forefathers ordained a seal and a chancellor to keep it and to grant remedial writs to all plaintiffs without [charge].

Writs used to be of this fashion: they were without rasure, interlineation or false Latin, without transposition,[1] without any flaw in the parchment, in the ink, or the writing, and they were written in English characters in a hand well-known as that of the Chancery. And they contained the names of the parties, the substance of the plaint, the name of the judge, and the name of the king or other the witness to the writ. Sometimes they were addressed to the lord of the fee, sometimes to the bailiff, sometimes to the justices of the bench, sometimes to the justices in eyre, sometimes to men whose names were given, sometimes to men whose names were not given, but who were addressed as bailiffs, justices, or sheriffs; and every plaintiff had a commission to his judge by writ patent as aforesaid. And now justices, sheriffs, and their clerks can falsify and sup-

[1] We cannot translate the *usucle* of the text.

press and lose and amend and impair writs without discovery or punishment, because the writs now are close writs by an abuse of the law. And by the said seal only is jurisdiction assignable to all plaintiffs, and no difficulty should be made; and the chancellor is charged to do this, by oath upon his allegiance, for he is charged by the king that he will not sell or delay or deny remedial writ to anyone.

Ch. III. Of Jurisdiction.

Jurisdiction is the power *jus dicere*. This power God gave to Moses, and this power have those who now hold His place upon earth, such as the pope and the emperor, and beneath them the king has now this power in his realm.

The king by the authority of his dignity makes his justices in divers degrees and limits to each his power, and this in various ways, sometimes for one special case, as in the commissions for the petty assizes, sometimes with a greater generality, as in the commissions of the justices in eyre, and of the chief justices who hold the pleas of the king, and of the justices of the bench, to whom power is given to hear and determine cases of the infringement of fines, grand assizes, pleas that have been removed into their court, and those which concern the rights of the king or the queen in respect of their fees, and suits founded on the king's writs, where they are named generally or specially.

Beside this, the barons of the exchequer have jurisdiction over the king's receivers and bailiffs, and over the alienation of fees and rights belonging to the king in right of his crown. Sometimes jurisdiction is given to sheriffs on default being made by others, as appears when a writ says *Quod nisi feceris, vicecomes meus de comitatu illo faciet;* and sometimes by the default of those who have the return of returnable writs [*i.e.* the franchise *returnus brevium*]. Sometimes jurisdiction accrues to the justices of the bench, as when causes are removed out of the county courts, that they may come before the said justices; and sometimes in

order that record of suits [pending] in the inferior courts without writ may come before the justices of the bench; but whereas the *recordari facias* ought not to avail a plaintiff until after judgment has been given [by those to whom] the suits ought to be returned, and as suits begun by writ of right are to be sent back from the bench to the courts of the lords in case the lords have not made any default of right, so also suits which have been removed by *pone* are to be returned to the county courts in case they were removed before the parties had ever appeared in the county courts for the purpose of pleading.

To the office of the chief justices it belongs to redress the wrongful judgments, the wrongs and errors of other justices, and to punish them; but this must be done by writ *Quod venire facias coram ipso rege processum et recordum cum brevi originali.* And it is before these justices that all writs are pleadable and returnable and to be determined in which are the words *coram ipso rege*, and writs which are not pleadable and returnable *coram rege* are returnable in the chancery. And it belongs to their office to hear and determine all plaints of personal torts done within twelve leagues round the place where the king is, and to deliver the gaols of all prisoners who are deliverable, and to determine all that is determinable by justices in eyre—but their power may be greater or less according to the nature of their commission.

And again there is a kind of jurisdiction which is called 'arbitral,' and which is neither 'ordinary' nor 'assigned'; such is that which comes from the agreement of the parties.

From jurisdiction arises judgment, but judgment has several meanings. In one of these judgment is the same as absolution of sins. In another it is the same as sentence, which sometimes sounds in good, as when it is for a reward, or for an acquittal from punishment, and sometimes it sounds in ill, as when it is for excommunication. In another sense judgment is the issue of a plea and the end of an 'assigned' jurisdiction, and this may be a temporary or a final end: temporary, as when there is a dilatory excep-

tion but the suit remains in its integrity; final, as when there is a definitive sentence in the action.

Judgments vary as sins vary; but for like sins there should be like judgments; for mortal sins according to the warrant of the Old Testament are absolved by death upon this earth, so far as lay judges are concerned. For in the Old Testament it is found that God commanded Moses that he should not suffer felons to live, so that a temporal punishment excuses sinners from the eternal punishment. But before we say any more of punishments we ought to see by what means and by what judgments contumacious sinners can be driven to appear in court.

Ch. IV. Of Punishable Defaults.

Defaults are punishable in divers ways. In appeals of felony they are punishable by judgment of outlawry, which judgment is this, that when on account of a felony anyone has been ordered by solemn cry to come to the king's peace in three successive county courts, and he does not come, then he shall be accounted a wolf, and 'Wolfshead!' shall be cried against him, for that a wolf is a beast hated of all folk; and from that time forward it is lawful for anyone to slay him like a wolf. And there was a custom to bring the heads to the chief place in the county or the franchise, and one received ten marks from the county for the head of every outlaw or wolf. And these fugitives forfeit by their contumacy the realm, the peace, their friends and all that is of the peace or at the peace, and every kind of right that they ever had by any title, and all manner of law, not only for themselves but for their heirs for ever. And again, all confederation of homage, alliance, affinity, service, friendship, oaths, and all manner of obligations between outlaws and those of better condition are broken, disjoined, and undone by the judgment, and all manner of gifts, sales, contracts, and all manner of actions which they had against any are annulled,

aventissent, e ne mie soulement puis cel jugement mes puis le tens de sa felonie pur laquele tiel jugement se fist, e ces adunc ne purrent il jaimes resortir a respondre de la felonie si li proces neit este vicious, si noun par grant merci[1] e grace du Roi. Femmes estre pleives e mises en diseine a foer des hommes einz furent weives.

Ch. V. De Defautes.

Cil personels accions veniales solerent defautes estre puniez en ceste manere, lempriſt des defendaunz a la vaillaunce des demande en biens moebles ou nient moebles, e puis furent somons doir lur jugemenz de lur defautes. E par defaute apres defaute torn jugement pur les pleintifs. Pus changea cel usage el tens le Roi H. le primer qe nul franc home ne fust destreint par le cors pur personele accion veniale tancum il eust fieu, en quel cas li jugement de defaute se fist, tant qe al tens le Roi Henri le tierz, qe li pleintif recoverat seisine del fiux a tenir en demeine apres defaute iequis a due satisfaction, issi qe defaute fust plus damageous as contumaz qe profitable.

Ascuns accions sont personeles el non, e mixtes en le introduccion sicom de naifte, daconte, de covenant, e de ve de naam. E ascunes accions sunt qe tut soit qeles savourent de personeles accions e reales quant al introduccion neqedent ne tienent mie les reulles des accions dunt eles savourent, sicom es reconussances de menues assises; es queles si les tenanz fasent defautes, pur ceo nappent nule destresce ne prise de fieu ou dautre chose en la mein le Roi, eins sunt les reconussaunces pernables aussi com doffice e les jugemenz pronunciables solom le verdit des jurours en despit de teles defautes.

[1] The ed. of 1642 and Houard have a different punctuation.

Ch. VI. Of Personal Actions.

In the venial personal actions, if the defendants are not fee tenants, defaults used to be punished in this wise: in the first place it was awarded that their bodies should be taken, and if they could not be found they were put in exigend in whatever court the plea was, and they were demanded and cried for in three courts and no more, and if they did not appear at the fourth court, they were banished from the jurisdiction of the lord or the bailiffs of the court for years or for ever according to the amount of the trespass.

Ch. VII. Of Default in a Real Action.

Default in a real action is punishable thus: on the first default the thing demanded or its value is taken into the hand of the lord of the court, and the tenant is summoned to hear judgment of the default; but if the default be made after appearance, then the seisin is awarded to the plaintiff to hold by way of distress until he shall be ousted of it by lawful judgment; and then, if the tenant appears, in the first place he must replevy the thing that is demanded, and then must without delay answer for his default. And in this case he may deny the summons, saying that he was never summoned or never duly summoned, and about this he may make his law against the testimony of the summoners, although they be present; and if he can furnish his law he shall answer then to the action or the plaint.

Ch. VIII. Of Mixed Actions.

Defaults in mixed actions are punishable thus: the defendants are distrained by all their movable goods and their fees, save that they are not ejected from their possessions, and this from court to court until they appear and answer, and the issues come to the profit of the lord of the court.

Ch. IX. Of Pledges and Mainpernors.

Pledges and mainpernors are all one, though they have different names; but pledges are those who pledge something other than a man's body, as in real and mixed actions; mainpernors are found in personal actions only, and they pledge a man's body. Safe pledges are those who are sufficient to render the thing in question or its value, and are free men and fee tenants of him to whom the complaint is made and in whose court the plea is to be commenced, and if anyone loses his body or his fee by a default, this is punishment enough without his being amerced, but the sinner is not at once amerciable until he has appeared in court and has not been able to excuse his tort or salve his default. And as no one is amerciable who appears before summons, so also the plaintiff and his pledges for prosecution are not to be amerced for a non-suit if the tenant renders according to the words of the writ which warrants the summons, or otherwise makes satisfaction. Thus if the king bids the sheriff order a certain person to render or to do something and that if he does not do it and the plaintiff finds surety to sue, then he is to summon, attach, or distrain the defendant etc., in this case if the sheriff does not admonish the defendant to render or to do according to the terms of the warrant, but at once takes security from the plaintiff, he, the sheriff, does an injury. So the plaintiff and his pledges for prosecution do not become amerciable until the defendant proffers himself in court against them and the plaintiff then makes default by non-suit.

And those sheriffs also do wrong who defer to execute the commands of the king until the plaintiffs have found surety for the prosecution, when the writs make no mention of any requirement of surety.

Ch. X. Of Defaults after Summons.

As there may be default of persons, so there may be default of things, *e.g.* of services issuing from a fee which is bound to render them. And if rent, suit, or other service due to any lord from his fee be in arrear, the tenant is not to be distrained by his movable goods, but ought to be summoned to salve his default, or to make satisfaction, or to answer why the services due to his lord from his possessions are in arrear; and if he does not appear on the summons, then by the award of the suitors of the lord's court the fee is to be taken into the lord's hand until he shall find pledges that he will submit to justice, and in addition he is to be summoned to hear judgment for his default; and if he comes not at the second summons, he is not amerciable for that until he appears, for he may still surrender the fee, or allege a privilege, or give some reason for not having obeyed the summons. And if the lord has no court or suitors of his own, or has not the power to do justice on his tenants in manner aforesaid, then this is to be done in the county, or in the hundred court, or else in the king's court, or in the last resort by a writ of 'customs and services,' or some other remedial writ. And if the tenant has a mesne [lord] who is bound to acquit him, the lord by this loses nothing of his right, though he may be delayed; but the lord as aforesaid shall betake himself to his fee and the tenant may recover his damages wherever he can do so, and he must account it his own folly that he entered or abode in another man's fee without the leave of the lord. And if anyone alienates another's fee and enfeoffs a third person of the tenement to hold of him (the alienor), and thus makes himself a mesne between lord and tenant, to the prejudice of the lord, in that case the law used to take the course which will be described below.

Ch. XI. De Champeon.

Si ascun face ou die a son seignur de qi il tient chose qe li court a damage de son cors, ou a sa desheriteson, ou a grant deshonur, primerement par agard de son court ou dautre est tiel somonable sil seit soun tenaunt, e puis sil fet defaute est destreingnable par son fieu, ou par la[1] seignurie taunt qil viegne ; e sil piert e ne se puisse aquiter par la lei sei xij demein ou meins solom lagard de la court, si iert desheritable del tenaunce qil tient del seignur en tiel fieu par le jugement des suitiers. E issi covient qe les tenaunz departent de lur mesons,[2] e se chevest as chiefs seignurs. E si ascun dedie service qil deit, purra estre dit de par le seignur qe atort le dedist el tut ou en partie, e pur ceo atort e *cet.*, e issi outre contaunt de la seisine e par mi qi mein[3] e puis issi e qe tiel soit le dreit e *cet.*, sicom apres iert dist. E le tenaunt purra eslire a defendre cel droit par soun cors ou par autre, ou descendre en la grande assise e prier reconoissaunce li quel il eit majour droit a tenir tiel fieu especefie de A. quite de tiel service sicom il tient, ou le dist A . daver le dit fieu en demeyne sicom il cleime.

E si le defendaunt voille son droit deffendre par le cors dautri, distincter, car si laccion soit personele ne lestovera mie aver suite present, e si laccion seit reale e le tenaunt eit son champion present, adunqe covient qe lactour presente le son champion contre le champion del defendant, ou il piert son counte e son bref; e li defendaunt neit mie

[1] MS. has a space at this point; a word is apparently omitted.

[2] Corr. *mesnes*.

[3] *Il prouve qe mesme le tenant a payé.* Houard.

present, then the parties, if they have submitted to battle, must be adjourned to the next court, in order that they may then have their champions present. And this appears in Saxling's case: Hunstan had bound himself in a debt of ten pounds to Saxling by an obligatory writing made at Rome; Hunstan denied the writing as 'not his deed'; Saxling answered by way of replication, that wrongfully did Hunstan deny it, and wrongfully for that it was sealed with his seal, or with the seal of such an one which [Hunstan] had borrowed in such a day, year, and place; and [Saxling added] that if Hunstan would deny this, he, Saxling, was ready to prove it by the body of *A*, who saw it, or by *B* or *C*, who saw it, and if any mischance should befall them, then by another who could and would prove it. And thus it appears that there is no need to have suit present on the first day in these personal actions, but, as already said, the parties may be adjourned. And if anyone who cannot be a proper witness, or who is a hired [?] champion and was not named when the battle was waged, proffers himself to fight for one of the parties, and the adverse party challenges him and demands judgment of the default, then judgment must be given against him who proffers this champion. And in case any mischance happens to a champion so that he cannot fight according to his proffer, no one may be received to do battle in his stead, unless it be his eldest legitimate son, as has been said above.[1] And if the champion of the tenant is vanquished, thereby all homage, alliance and oaths of fealty and homage between the lord who is plaintiff and the tenant who is defendant are undone, and the lord shall recover his fee to hold in demesne, as he would have recovered it by a grand assize. And if the lord's champion is vanquished, then the judgment is that the tenant do hold his fee for ever quit of the service that has been demanded.

If the king does any tort to any man of his who holds a fee of him in chief, the same procedure is to be observed, but the earls in parliament and the other suitors there have

[1] P. 109.

teles causes oir e terminer pur qe le Roi ne poez par li ne par ses justices les causes terminer, ne les jugemenz pronuncier ou li roi est actour. E sicom les seignurs poent chalenger lur tenaunz de torz e de despit fez a eux entre les articles de lur feautie, en meme la manere sunt les seignurs chalengeables de tortz e despiz featez par eus a lur tenauntz, e si les seignurs ne deignent de parer en jugement a respondre a lur tenaunz, a dunc fest agarder qe les tenaunz mes ne facent service pur lur fieus einz ceo[1] qe les seignurs les eient responduz.

Ch. XII. De Peynes.

De[2] peine est satisfaccion de trespas ou de pecchie. Deus maneres sunt de peine, voluntire e violente. Voluntire est cele qe tient son actour de son gre, sicom est en compromisses, pur chacer gentz a tenir lur contractz : mes de celes peines ne sentremet mie droit. Des peines violentes dunt dreit sentremet sont ij maners, corporele e peccuniele. Des corporeles sunt ascuns morteles, e ascuns veniales. Des mortels se funt ascuns par perte de testes, ascuns par longe trayne, ascuns par pendre, ascuns par arson, ascuns par vif enfoeure, ascuns par saut de faleise ou dautre lu perilous, e ascuns par noer e ascuns autrement solon aunciens privileges ou usages. Les pecchiez qe demaundent morteles peines sunt les pecchiez mortiels. Des veniales peines corporeles ascuns se funt par pierte de menbre sicom la felonie de mahain en cas de toute de menbre, ascuns par pierte del poueir[3] cum est de faus notaires, e de cillours de bourses oveqe larcin de meins de xij d. e plus de vj d., e qe par le roi Richard se changea a la perte doreille, ascuns par perte des bous des langes com soleit estre de faus tesmoins, ascuns par plaie, ascuns par enprisonement sicom pur enprisonement, ascunes par perte de touz biens moebles e noun moebles sicom de faus

[1] *ces* MS. [2] Omit *De*. [3] *pouce*? (Houard).

false judgment, and of usurers attainted of usury after their deaths, but not if attainted while alive, for in that case they only lose their movables and may amend their sin by penance and repentance and have heirs); some by exile and abjuration of christendom, or of the realm, or of the vill or the fee and . . . . (as is the case of those attainted of personal trespass who have not wherewith to make satisfaction), some by banishment (as said above about those who are contumacious in venial personal actions and who hold no fee); some by other corporal punishments, as will appear incidentally hereafter.

And albeit one sins by deed or by word, in all judgments in personal actions seven things must be weighed in the balance of holy conscience, to wit, (1) the cause, (2) the person, (3) the place, (4) the time, (5) the quality, (6) the quantity, (7) the event.[1] (1) the cause—this may be mortal or venial; (2) the person of the plaintiff and of the defendant; (3) the place—whether in sanctuary or no; (4) the time—whether by day or by night; (5) the quality—whether the trespass be light or grave; (6) the quantity—this is self-evident; (7) the event—*e.g.* whether a taking was made by way of distress and lawful impounding, or by way of larceny and unlawful alienation.

Ch. XIII. Of the Infamous.

All who are lawfully attainted of a sin whence corporal punishment ensues are infamous. All who sin mortally or feloniously are infamous; all who perjure themselves by false testimony; all false judges; all usurers; and all who are attainted of those personal trespasses for which open penance is enjoined by right judgment but is forborne in favour of fines and amercements, the infliction of which instead of open penance is warranted by compassion. Also they are infamous who hunt after tombs and coffins by night or hidden things for evil purposes; also those who enslave a free man against his will or blemish the repute of

[1] Dig. xlviii. 19, 16; Bracton, f. 105.

his liberty by extortion or by purchasing [writs]; also those who bring attaints and cannot prove the perjury, and thus bring slander on lawful jurors; also those who wrongfully indict or appeal an innocent man to the blemishment of his repute for any crime or other infamous personal trespass. For these three pleas are accounted odious: the first because holy writ does not agree with vengeance, but God has retained for Himself vengeance for crimes and enjoins mercy—and this is against the appeal of felony; the second, namely, the attaint for perjury, is odious because of the corporal punishment to which it leads; the third is odious because the law of nature forbids it and will not accord with the serfage of man or of any other creature.

Also those are infamous who do mortal battle for hire; those who are vanquished in a battle adjudged between two men; those who withdraw from the battle after they have affirmed that they will fight, if the default be due to them; those who keep brothels of hired women; those who knowingly take back their wives when guilty of the sin of adultery; those who retain their wives whom they suspect of that sin; those who commit the sin of adultery; those who while their wives are alive espouse other women; those who elope with or corrupt a nun; those who take reward for suffering fornication; those who overlie their children to death; those who corrupt their relations by consanguinity or affinity; those who espouse a woman within a year after the deaths of their former wives; those who suffer themselves to be married within a year after the death of their former husbands; those who, being married, affirm that they have other wives or husbands; those women who purify themselves too soon:—these and divers others are infamous and punishable by corporal punishment in divers manners.

Ch. XIV. [*De Majestie.*]

Li mortiel pecchie de magestie ver le Roi celestre de sodomie se fornist *par* enfoir les peccheours tut vifs *par* fund en *tere* q*e* memoire sen esteigne, *pur* la *grant* abominacion del fet, cum cel pecche q*e* crie vengeaunce e q*e* plus est orrible q*e* de porgiser mere. Mes cel pecche ne satteint james devant juge *par* accusement, einz en est laudience defendue.

Li jugement de reneire se fornist *par* le feu cum *par* ardour en poudre.[1]

Li jugement del herege si est quadruple; lun est escom*e*nge, lautre deg*r*adacion, li tierz desheriteson, e la quartre destre ars en cendre.

Les jugemenz de magestie ver le Roi de la *terre* se fornist *par* peines al ordenance e a la voluntie le Roi e *par* la mort. Les jugemenz de faussonerie e de *traisson* se fornissent *par* trayn*er* e pendre a la mort.

Ch. XV. De Arson.

Le jugement darson se fornist *par* pendre a la mort, q*e* se soloit fornir *par* ardour; e en cas ou li fieu damaious sest p*ris* *par* everesce de ascun custumablement yveroigne, soloit len get*er* tieux el fieu e ardoir q*uant* len les trova freschement el fet.

Ch. XVI. De Jugement Domicide.

Li jugement domicide se fornist *com*monement *par* pendre jequis a la mort, en felonies nient notoires; e en notoires se fornist *par* *perte* des testes. E homicidez neqedent distinctez; car ascuns sunt homicides q*e* point ne pecchent ne peyne ne deservent, ascuns sunt homicides en significacion e ne mie en nouns, e ascuns de eus memes sont homicides. El p*rimer* cas sicom est de loiaux juges

[1] *ou pendre.* Houard.

who kill by right judgment and holy conscience, and that of the ministers who assent to and execute lawful judgments of death; such is also the case of those who kill without a judgment, but still without sin, being homicides without discretion, *e.g.* madmen, born fools, and infants under seven years of age; and such is also the case of those who kill to maintain the peace or who kill by law, *e.g.* who kill mortal sinners in sins which are notorious in fact, or those who kill to save themselves and could not otherwise escape death.

(2) Our second case is that of those who have the will to kill but do not kill, *e.g.* those who abandon infants, old or sick folk in places where they intend them to die for want of help, and those who torture an innocent man and make him acknowledge and confess felony and mortal sin; and these are to be adjudged to death for their corrupt intention, albeit they did not kill according to their purpose. Such is the case also of those who are homicides in will, who appeal or indict an innocent man of a mortal crime and do not prove their appeals or their assertions; and such were formerly adjudged to death, but King Henry I. ordained this mitigation, that they should be adjudged, not to death, but to corporal punishment. And as to those who make wrongful appeals, let us distinguish; for if a man has appealed another so falsely that he has no title for his appeal in any indictment or other reasonable proof, in such a case he shall be awarded to make satisfaction to the party grieved and also to suffer corporal punishment.

As to mainpernors, King Knut used to judge them as though they were principals when the principals did not appear in court; but King Henry I. made this distinction, that Knut's ordinance should hold good if the mainpernors were consenting to the flight, but if not, then they were to be condemnable to make satisfaction to the plaintiff as their principals would have been condemnable had they been present, but as regards the king they should only be condemned to a pecuniary punishment.

El tierz cas com est de ceux qi se ardent, pendent, noient ou autrement se occient. Dautrepart fet a destiner[1] dautres homicides sicom de fisiciens, mirs,[2] justices, testmoins, de ceus qi ferent e neqedent mie occire, de fous[3] darragez e de futifs. Car fisiciens cirurgiens soient sages en lur facultez e facent loials cures provablement e eient seines les consciences, si qe rien neit failli al pacient qe a lur art appendi, si lur paciens moerent pur ceo ne sunt il mie homicides ne mahaimours; mes cil enpreignent a fere cure qil ne sievent a bon chef mettre ou sil a bon chef sevent e sentremettent neqedent follement ou negligealment, issi qil y mettent froid pur chaud ou le revers ou trop pou de cure, ou ne mettent une due diligence, e nomeement en arsons e abscissions, qe sunt defendues a fere forqe al peril des mestres, si lur paciens moerent ou perdent menbre, en tel cas sunt il homicides ou mahainours. Juges jugent ascune foiz homme a la mort faussement a escient, e ascune foiz par ignoraunce. El primer cas sunt il homicides e pendables par jugement; e ne soulement les juges, mes les fornissours, assessours, consentanz, e tieux qe nel destorberent cum fere le poieient.

El secund cas distinctez, car une manere dignoraunce est sicom de chose nient sue ne nestoit estre sue, e cele escuse; autre est de chose nient sue, qe estoit estre sue tut ne seit lem point tenu del saver, e celi escuse aussi; la tierce manere est qe vient de non savance de ceo qe len est tenu a savoir, e cele nescuse nient. E notez par ignoraunce en sei nest mie pecchie, mes la negligence de savoir est pecchie; ne li juge ne pecche mie de ceo qe il ne siet la lei, einz pecche de sa folie emprise de juger folement ou fausement.

La quarte manere dignoraunce est de ceo qe len quide de chose autre qe droit, e si tiele ignoraunce viegne de fet se escuse ele, e si de droit a dunc nescuse ele mie. Ou issi,

[1] Corr. *distincter*. [2] *jurees* 1642.
[3] MS. repeats *de fous*.

of law it is no excuse. Or put it thus: there is an ignorance that is superable, and that is no excuse; and there is an ignorance that is insuperable, and that is an excuse, whether it arises from nature, as from excessive age, or from a malady, such as madness. And what has been said of judges is to be understood also of jurors who testify in notorious cases.

Where divers persons are engaged in a felonious medley and one of them is killed, but no one thought to kill him; and again, where a child is killed by too much beating; and again, where divers persons have wounded a man and he dies of one wound—in these cases all of them in mass are to be adjudged homicides upon the open evidence of the fact, for the will of the strikers who did not wish to kill no one can judge save God only, albeit that some took part in the medley for the prevention of evil and with good intentions. Some command others to go, and this may be for good or for ill; some hold down while others strike; some let the evil-doers into the house while others are keeping watch to prevent their being interrupted: if such cases as these be not notorious, then acquittal and condemnation must be left to the discretion of the jurors. So also when men kill who are defending themselves or their right, as is apt to happen in disseisins. On the other hand, if a man shoots at another with a bolt from a bow or with an arrow and wounds him as it were mortally—if none the less the wounded man recovers, the wounder is not to be adjudged a homicide by human judgment, albeit his intent was to kill, for man can judge only of deeds and not of thoughts.

Then as to fools let us distinguish, for all fools can be adjudged homicides except natural fools and children within the age of seven years; for there can be no crime or sin without a corrupt will, and there can be no corruption of will where there is no discretion and an innocent conscience, save in the case of raging fools (?). And therefore Robert Walerand ordained that heirs who were born fools should be in ward to the king, to be married along with

marier ovesqe lur heritages de qi fieus qil tiegnent. Des arragez ensement fet a destincter, car les frenetics e les lunatics poent felonessement pecchir, e issi sunt il contables pur homicides ascuns foit e jugeable, mes ne mie les continuelement arragez.

Denfanz ensement distinctez, des enfantz homicides e des enfantz occis :—les homicides dedenz lage de xxj an ne sunt mie tantost jugeables a la mort en fez nient notoires de fet einz qe il soient de plener eage. Des enfaunz occis distinctez, li quel il soient occis es ventres des meres ou pus lur nativite ; el primer cas nest nul homicide jugeable pur ceo qe nul ne poet juger enfant avant ceo qil soit veu el secle le quel il soit monstrie ou non. E des enfanz occis el primer an de lur eage soit a la conoissaunce del eglise.

Des futifs e de eus deffendaunz est la destincteson cele, qe cist qe occist futif apres ceo qil sest rendu a la pees en fet nient notoire de fet, il iert jugeable a la mort cum homicide ; autrement nient. E cist qe occist homme soi defendaunt qe porroit foier e eschuire doccire est aussi jugeable a la mort ; e autrement nient.

Des crims de robberie, larcin e de homsocne ou le damage e laffrai passe xij d. sunt les peccheours pris en pecchiez occizables par la perte des testes si poeple soit present qe puisse le fet e la felonie tesmoiner. E es cas nient notoires est li jugement la mort par pendre.

Si li defendant soit femme, distinctez le quel ele out mari ou noun, e uncore en soit vestue, e del accion le quele ele soit mortele ou noun ; car si ele soit e fu soule e sanz baron qil eit espose al hus de mouster, e laccion soit mortele,

like a man; and if she is coverte of a husband, then we distinguish, for if she is accused of mortal crime as a principal she must answer, and if as an accessory then we must distinguish, for if she is accused of consenting to the felony of her husband or to that of another with her husband's knowledge, then once more we must distinguish, for to the crime of larceny or of hamsoken and all other lesser sins she may answer that she is under her husband's rod and that she may not contradict him, and in larceny this answer is peremptory; but if what she did was done without her husband's knowledge, then she must answer. And an unmarried woman accused of being in the company of a thief at midnight or for a little while may plead that she was only in his company as a hired prostitute.

The effect of a judgment of death, of outlawry, of abjuration of the realm, of those who are vanquished in battle for a mortal felony or otherwise attainted of a mortal sin, whether notorious or not notorious, is that by the corruption of the stock, which is mortified by the mortal felony of the sinners, the right of blood is extinguished and the descent of every right in the blood, so that nothing can descend from them to any of their heirs, near or remote, either by descent or by resort, but such rights remain escheated to the lords of the fees from the time when the sins were committed, whoever may have become tenants, so that contracts made in the meantime and all fealties, contracts, and obligations are undone; and they are treated in the manner set forth above in connexion with outlawry; and such movable goods as remain, when those that were held in right of another are subtracted, are forfeited to the king; and the king in remembrance of their felonies and in despite of the felons shall cause their houses to be pulled down, their gardens to be rooted up, their woods to be cut down and wasted, their meadows to be ploughed or otherwise destroyed; but King Henry I. modified this at the request of the community, so that, to save the fees from villainous waste, the kings took into their hands the fees of mortal felons, of whosesoever fee they might be,

e emprendroient les profiz par un an pur tiel estrep si len en feist autre gre.

Le crim de rap se fornist ore pur pendre a la mort sanz aver regard li quel la femme ravie seit pucelle ou noun ou sanz destincter de quele condicion ele seit, ou le quel a sute personele ou a la sieute le Roi, li qel crim avant le tens le Roi Edward le secund se fornist par crevure de eux e la perte des coilz pur lappetit qe entra par mi les eulx, e la chalor de stupre vegnaunt es reins del leccheour.

Set choses destorbent mortieux jugemenz: lune faus jugement ou fol jugement, lautre faus testmoinage, la tierce defaute de meillour respons, la quartre la hastivesce le Roi, la quinte de feme ceinte denfaunt. Les primers iij cas prenent respit par xl jurs, le quarte par trente jours, e la quinte par xl simenes ou plus [1] lenfaunt ne seit eins ces [2] vie.[3] La sisime est defaute de discrecion sicom est de foux nastres, des arragez e denfanz e de trop liens ou de eles esperet.

La setime est povertie; en quel cas distinctez, ou de la povertie del peccheour, ou de la chose. Car li poure qe defuie famitie prent vitaille pur sa vie sustenir, ou garnement qil ne moere pur froit si par tant se sauve de la mort nest mie pur taunt jugeable a la mort sil ne soit de poer del aver achatie ou empromptie, desicom teus en sunt garantiz par lei naturele. E tut seit qe lei neit regard forqe as quer des peccheour, le Roi Edward neqedent limita la quantite de robberie e de larcin en ceste manere, cest assaver qe nul ne ust jugement de la mort si soun larcin, son hampsocne ou sa robberie ne passast xij d. desterlings.

E notez qe li Roi Henri le primer par Ranulf de Glanvil ordena en totes mortels accions qe par la ou laccion fust

[1] Supply *si*. [2] Corr. *ceo*. [3] Perhaps *nie*.

by an affirmative exception, this affirmative should be first received in proof, and this in favour of the salvation of defendants. And formerly if one man surmised felony against another and that other replied to the action by giving the lie, then the proof of this affirmation, namely, the 'You lie,' was awarded to the defendant and was to be given by his body or otherwise. And so too if the defendant said that he could not have been present at the crime at the time and place alleged, for that he was in some other place, such that the presumption was that he could not have been at the deed, or if he said that he came to the thing in dispute by some lawful title, then in favour of salvation the proof was awarded to the defendant, but under a peremptory peril of being defeated both in the exception and the action. But if the defendant simply traverses or denies the action, then in this case the proof is with the plaintiff.

The judgment of death by hanging is provided for outlaws, and waifs, and for persons who have been banished or exiled or have abjured the realm, if they return before the lawful term and are taken and detained.

Ch. XVII. Of various Kinds of Punishment.

Having treated of mortal corporal punishments, we must descend to venial corporal punishments, which take the form of public and infamatory penances. And first we speak of retaliatory punishments, and these are awarded in three cases, to wit, mayhem, wounding, and imprisonment, in which cases if the pleas be commenced by way of appeals of felony for vengeance only, then retaliatory judgments are to be given, thus, mayhem for mayhem, wound for wound, imprisonment for imprisonment; but if the pleas be commenced venially in the form of trespass, then the judgment is that the sinners do make reasonable satisfaction to the plaintiffs, and further an overt penance according to the quantity of the trespass is to be awarded them. Overt penances are these: [compulsion to] the repair of highways, footways, or bridges, being put in the pillory or the tumbrel,

imprisonment under judgment, abjuration of the realm, exile, banishment from the place, or the vill, or the land, or the fee, to enter such a place or to leave it under judgment, and ransom of such punishments by a pecuniary punishment or some other fine—and other such sorts of penal judgments. And if the sinners are infants or otherwise in ward, their guardians are adjudged to pay the damages and may betake themselves to the goods of the trespassers, but the overt penance is suspended so long as the sinner is in ward. And punishments vary according to distinctions between sins and between sinners in manner following. And first of false judges whose sins are heavier than those of others, since they are of higher rank than others.

Ch. XVIII. Of False Justices.

As to false justices delegate, King Alfred ordained this judgment, that (for the despite which they do to God, whose vicars they make themselves, and to the king, who has honoured them by placing them in a noble seat, namely in the chair of God, and has given them the great dignity of representing the person of God and of the king for the punishment of sinners), they should first be adjudged to make satisfaction to the injured, and that the remnant of their goods should be forfeited to the king, with a saving for the rights and debts of others, and that all their possessions should be forfeited, and all the possessions purchased by them, into whosesoever hands they shall have come, and that then they should be cast down, after the likeness of the false Lucifer, so low that they should never rise again, and that their bodies should be punishable and exileable at the king's will; and that for a false mortal judgment they should be hanged like other homicides, and mayhem for mayhem, wound for wound, imprisonment for imprisonment, and like for like in all particulars of place and condition.

The judgment of false judges ordinary in the case of venial judgments is not so heavy as that of judges delegate,

which has been stated above, but in the first place they are to be condemned to satisfy the plaintiffs, and then to be punished in relation to the king by pecuniary penalties, and they are to be forjudged of every jurisdiction; but in mortal cases, and those which demand retaliation, they are to be punished like other judges in manner aforesaid.

Ch. XIX. Of Perjury.

As to the great sin of perjury, we distinguish between perjury by false testimony and perjury by belying the faith of one's oath of fealty. In the former case we distinguish mortal from venial perjury. In the case of mortal perjury there is mortal judgment, as in the case of open homicide. And note that in all personal actions [entered as tortious] at the suit of the party, the judgment is that due satisfaction be made to the plaintiff, and that the sinners be punished by a corporal punishment, which can be redeemed by a ransom in money. And for venial perjury those convicted may be condemned to exile for years or for ever, and their woods, meadows, houses, and gardens may be destroyed as though they were homicides, but their heirs will not be disinherited.

As to the other sort of perjury, we distinguish between faith belied to the king and faith belied to another. And in the king's case we distinguish whether the swearer was his tenant or no. If the oath of fealty was issuing from the fee, and the fealty is blemished in any point, then the procedure is that described in our chapter on defaults. If the fealty does not issue from the fee, then we must distinguish the common fealty sworn to the king by those who dwell within his fee, in which case there is a simple corporal punishment, which exceeds at the king's will the punishment which would be awarded to others who are not the king's ministers.

Ch. XX. De Office des Justices en Eire.

Presentemenz des pecchiez se funt par loffice de corouners, par viscontes e baillifs en tourns e veunes, par enquerours e justices especiaux, e par loffice des Rois, ou de lur chief justices, ou de lur justices generales. E par ceo qe les uns nunt poer a terminer les pecchez de tieux presentemenz ne de punir les trespassours, e les autres qe point[1] ne voellent, ou ne funt mie duement ceo qe droit douroit,[2] ou punissent les innocens e esparnient as coupables, estoit aunciennement ordene qe les Rois par eus ou par lur chief justices ou par justices generals a tuz plez oir e terminer, errasent de vij. aunz en vij. ans par mie tuz countiez, pur receivre les roulles de totes justices assignez, de corouners, denquerours, de eschatcours, de viscountes, de hundreders, de bailifs, e de touz seneschaus de trestuz lur jugements, enquestes, presentment e touz lur offices, e de ceux roulles diligealment examiner, si ascun eust erre taunt ne quant en la lei, ou quant al damage del Roi, ou en grevaunce del poeple; e ceo qil trovassent nient termine terminassent en eire, redresseassent eles ministres e les negligenz punirent solom les riules de droit, e puis enquessent de touz pecchiez qe a la juresdiccion e la sute des Rois appendissent. E notez qe tut eient les Rois sute entor[3] mortieus pecchiez, e es torz fez au lei e al droit de la coroune, pur ceo ne fet mie a entendre qil eit sute en touz pecchiez. Mes si ascun soit pleintif ne sue mie sa pleinte apres ceo qele averad este afferme, distinctez, car si de pecchie personel venial, suffit por les defendaunz, car la noun sieute des pleintifs suppose satisfaccion des blescies; e si de pecche mortiel, uncore niad le Roi nule siute si noun par garaunt dappel ou denditement, en queux bosoigne as appellez e enditent[4] qil se hastent a due aquitaunce, ne lur est nul tenu a respondre de nule meindre[5] accion pur lexcepcion de la mortiele infamie qe les forbarre.

[1] Corr. *poient*.
[2] *de droit ils puissent*, 1642 and Houard.
[3] *en tous* or *envers*.
[4] Corr. *enditees*, 1642 and Houard.
[5] *maniere*, 1642 and Houard.

Ch. XXI. The Articles of the Eyre.

Every county was warned at least forty days in advance of the king's coming by a general summons; and then after the essoins were adjourned, and the assizes of victual were ordained, and the bans of ordinances were proclaimed, and days were given to the men of the franchises, and the jurors were challenged, sworn and charged with their articles, and the claims of franchises, and the rolls of the justices and the coroners and the stewards, and others, and of all manner of pleas and presentments since the last eyre, were taken and received—after all this, then the first business was to inquire of, hear, and determine the matters which were presented in the last eyre, and which were then commenced but not finished; and the next was to hear and determine the plaints and writs, to deliver the prisoners, examine the rolls, and redress errors and all injuries, by lawful judgment without respect of persons. And all these judges ordinary or assigned, sheriffs, bailiffs, stewards of the lords of fees, and all others who claimed jurisdiction could be attainted of any tort done against the holy rules of right, and were condemned by the judgment provided for tortious judges, with due respect to their degrees. Coroners, escheators, sheriffs, bailiffs, and other officers guilty of wrongs against the king and the people were punished like other men, and in addition they were punished at the king's will. The sinners who were found using false scales and false weights, and making gain by breach of the assize of bread, wine, ale, cloth, and other merchandise, were sent, if males to the pillory, if women to the tumbrel, and were forbidden further merchandise, and were not allowed to excuse themselves by the usage or franchise of any town or place, for such a usage would be contrary to law. Cutpurses were seized in their crimes 'notorious in fact,' and for cutting a purse, or taking other goods to the value of less than twelve, but more than six, pence, one

soloit len fere freschement saunz mener les en prison ou aillours devant juge assigne couper lune oreille, e de banir les de la ville ou del fieu a lautre foit. E pur lour larcin meins vaillaunt de vj. d. soloient tieux estre levez al pillorie al primer foiz e destre baniz a lautre.

En jugemenz des personels trespas venials soloit Martin de Pateshull user quant a taxacion des damages mises en pleintes cest cours; il soloit enquere doffice des jurors par queux ascun principal trespassour fut atteint devant li, des nons de trestuz ceus qi coupables estoient el principal degrie e en laccessoire, e einz ces[1] qil alast al jugement des damages solom le noumbre des enditez, issi qe nul pleintif ne recoverast plusours entiers damages par pluralite des pleintifs[2] de un soul trespas vers les trespassours severalment.

Ch. XXII. Des Fraunchises.

Des fraunchises notez qe pur ceo qe le Roi ne use forqe al foier denfant dendreit les e les dignetiez de sa coroune, nest nule feffement de loiale fraunchise si estable qe les Rois ne les poent rapelir par dreit proces, par si qil en facent satisfaccion a la valante cum pur la garauntie. E ben list a chescun qi sensent greive a fere la siute pur le Roi pur fere anentir chescun fraunchise forfete par contumace, cum si baillif de fraunchise ne face execucion del retorn de viscounte del comandement le Roi, par abusion cum par desus de la fraunchise sicom trop largement ou nient duement; car par le bref suaunt qe li viceconte entre en la fraunchise, recovere le Roi sa seisine e issi devent jug[3] gueldable ceo qe avant fu enfraunchi. E tuz ceux soloient forfere la fraunchise de garde de gaole aver en feu qe par title de fraunchise de infangenetheof ou de retorn des briefs, nenvoierent saunz delai les prisons pris en lus

[1] Corr. ccc. [2] Corr. *plcintes*. [3] Corr. *juge*.

their franchise for felonies committed in the geldable, so that the king may not lose the pelf [stolen goods] nor the chattels of the felons, nor other profits and rights; for the king gives no franchise to the prejudice of himself or of another, more especially the return of writs and the custody of gaols. To take an example: just as if two neighbours enjoy franchises, one cannot retain a prisoner to the prejudice of the other, so no man with a franchise can retain a prisoner to the prejudice of the king, and if he does it he forfeits his franchise. And it behoves also that jurors must come from the franchises before the king and his commissioners into the geldable and elsewhere at his command, as well in criminal as in real actions. And if anyone knowingly receives a felon into his franchise, it is challengeable on that account.

Ch. XXIII. Of the Satisfaction of Debts.

If damages be recovered against one or more, judgment [in a subsequent action] must be given against the plaintiff; in this case, for example, namely, if divers persons owe a debt in such wise that each of them is bound for the whole, then if one of them makes accord with the plaintiff, albeit he does not expressly make the accord on behalf of all the debtors, nevertheless all of them are quit, for satisfaction has relation to the debt, and not to the persons of the debtors.

Ch. XXIV. Cases of Disseisin.

If the jurors in petty assizes are of one mind, let one of them on behalf of all give their common verdict; and if they say that they know nothing, the plaintiff will recover nothing, for he has not proved his action; and if they are of different minds, they are not on that account to be threatened or imprisoned, but are to be separated from each other, and argued with, and diligently examined; and if any two jurors out of the whole set agree, that is enough

for the party for whom they testify; and they are not to be examined about his title to the possession, for it is enough for the judge to know that the plaintiff was disseised from his possession, whether that possession were rightful or wrongful; for albeit it was wrongful, nevertheless because the defendant had recourse to force instead of judgment, and made himself a judge, judgment shall be given for the plaintiff, that he recover his seisin such as it was, with a saving for every right which may be asserted under any other writ; but there cannot be assize upon assize, or attaint upon attaint, between the same parties as to the same tenement. And if jurors find for one party, then judgment must be given for him, whether they have been sworn to give a verdict on the action or on an 'exception.' And inquiry must be made as to the other persons named in the writ, and as to whether the disseisors came with force and arms; and if they came with force and arms, albeit they did no damage to the body of anyone, all of them shall be adjudged to a corporal punishment according to the quantity of their sin. And if they ejected the plaintiff from his mansion or his house where some of his family dwelt, the felony of this hamsoken is punishable at the suit of the king or of the party; for no one is to be ejected without judgment from his house in which he has dwelt and which he has used as his own for one year, albeit he has no title save by disseisin or intrusion. And there is 'force and arms' enough if there be but a show of arms to frighten the adverse party; and under the name of 'arms' are comprised bows, arrows, cross-bows, axes, lances, swords, staves, slings, shields and armour whether of linen or of iron. And afterwards inquiry must be made as to the damages, that is, of the issues of the tenements after the disseisin, to whose hands those issues have come, and of the costs, charges, and reasonable expenses to which the plaintiff has been put in and about his recovery, and in all respects how much he is damaged by decrease of his goods or of his honour. And the damages being taxed, it shall be awarded that the plaintiff do recover his seisin, such as it was, by the

view of the jurors, and his damages, and the disseisors are punishable according to the particulars of their sins. As to the goods found in the tenement, of which the value cannot perhaps be estimated, *e.g.* charters, legal writings, treasure, and other things that are locked up, the plaintiff has his action by appeal of robbery or writ of trespass.

The judgment for larceny, when this has been proved in a venial action, is for satisfaction to the plaintiffs to the donble value of the things stolen, and in case of robbery to the fourfold value.

Ch. XXV. Of Amercements.

Pecuniary punishments we call amercements, which are real, personal, or mixed, and sometimes are certain and sometimes uncertain. Amercements are certain in some cases according to the dignity of the persons amerced; thus it is with earls and barons, for one who holds a whole earldom is amerced at one hundred pounds at the least, and a baron for a whole barony at a hundred marks; and those who hold less or more are amerciable in proportion to what they hold. In some other cases the amercement is fixed by a certain assize, as is the case where prisoners have escaped. And here you must distinguish whether the escape be from the king's prison or from another prison, and if from the king's prison, then whether the cause of imprisonment was mortal or venial, and if mortal, whether this cause had been proved [attainted] or no; and if it has been proved, whether by notoriety of fact or notoriety of law, then there is an uncertain corporal punishment; for in this case if the guardian or guardians of the prison were assenting to the escape then a mortal punishment ensues; but if the cause was not yet proved, and the guardian was not the king's minister and was not assenting to the escape, then the assessment of the punishment is a hundred shillings sterling, or more or less according to the usage of the country or place or prison. And if the cause be venial, then the escape is not punishable. And if the escape be

from a prison of some one other than the king, you must distinguish whether the cause of arrest be mortal or venial; and if it be mortal, then the aforesaid pecuniary penalty is applicable; and if it be venial, then there is no punishment for the escape.

Ch. XXVI. Of Taxable Amercements.

Common amercements are taxable by the oath and affeerment of the peers of those who fall into mercy according to the constitution of the charter of liberties,[1] which wills that the amercement of a free man shall be affeered according to the quantity of the trespass and so that his countenance be not abased, and the merchant with a saving for his merchandise, and the villain with a saving for his wainage. And the affeerors are to be chosen by the assent of the parties if they wish to be present. But the king's ministers are to be more severely charged, because of their broken faith.

There are divers cases in which corporal punishments are redeemed by fines in money; and these fines are called ransoms, which means that they are redemptions of corporal punishments. And some fines are 'common,' such as the murder fines and those inflicted on vills and communes for personal trespasses, and as to these King Edward ordained that they should be assessed in the presence of the justices, so that the names of those who ought to scot for them should be set down in the justices' rolls, so that the estreats might come to the sheriffs in parcels and not in gross sums.[2]

In cases where one recovers debts or damages by judgment, King Edward ordained that it should be in the election of the creditors to have execution made by levying such debts or damages from the movable goods of the debtors, or to have all their movable goods at the true price to the extent of the demand, save oxen and beasts of the plough, together with a moiety of the lands and tenements

[1] Mag. Cart. 1215, c. 20. [2] Stat. West. I. c. 18.

biens moebles ne suffisent a tenir, par certeine estente taunt qe les dettes ou les damages soient levez.

Es dreit de ceux qi sunt appellez ou enditez de felonie e ne sunt trovez, appent denquere coment il sunt cruz e nomement devant le Roi e ces justices erranz. E sil soient cruz par copables, adunc sunt il comandables a mettre en exigendes issi qe al primer countie apres leire soit li primer jour; e issi sunt il demandable par troiz countiez requis [1] al utlaguerie sil ne se rendent a la pees.

Ch. XXVII. Doffice des Justices en Eire.

Al office des justices en heire appent especialment enquere par jurours e par examinement des roulles as corouners de trestuz les utlaguiez pus la derreine heire, e pus la certificacion des nouns appent enquere des nouns de lur pleges, cest adire ou il furent en deseine ou en veuue de franc plege. E si lur pleges soient de meme lur contie, adunc sunt les pleges punissables par peine peccunielle pur ceo qe il neurent avant tieux cum il meinpristerent. E sil furent aillours en diseine, adunc appent denqere qi les recetta en cel countie en qi meinpai il furent. E ceux sunt punissables al foer des pleges par meme la reson.

Escrit eide des memoires des genz, sunt escriz chartres e monumenz mout necessaires pur tesmoignir les condicions e les poinz des contractz, de dons, des ventes, de fermes, e de autres par lo statut Leuthfred qi ordena qe lem pust defendre ledengues diz e contractz nuz e desvetuz par sa lei ordena qe actours provassent lur escriz dediz e nient provables par veisins en Engleterre pur les foreins contractz par bataille ou par copie e collacion dautres seales ou par jurours solom leleccion des actours.

[1] Corr. *jeques*

of the debtors, if the movable goods were not sufficient, to hold according to a fixed 'extent' until the debts and damages should be levied.[1]

As to those who are appealed or indicted of felony and who are not to be found, it behoves that inquiry be made, and more particularly before the king and his justices in eyre, as to their credit. And if they be believed to be guilty, then command is to be given that they be put in exigend, so that the first county court after the eyre shall be the first of the days [for their exaction], and then they are demandable at three county courts until they are outlawed, unless they will surrender themselves to the peace.

Ch. XXVII. The Office of Justices in Eyre.

To the office of justices in eyre it especially belongs to inquire by jurors and by examination of the coroners' rolls concerning all those outlawed since the last eyre, and, after their names have been certified, to inquire also as to the names of their pledges, that is to say, where they were in tithing or view of frankpledge; and if their pledges are of the same county, then they are punishable by a pecuniary punishment for not having produced those who were in their mainprise; and if the pledges be elsewhere, then inquiry must be made as to who received those men in that county and in whose mainpast they were, and these are punishable as pledges would be, and for the same reason.

To aid the memory of men, writings, charters, and muniments are very necessary, to testify the conditions and particulars of contracts, gifts, sales, and so forth, by the statute of Leuthfred, who ordained that one might deny by one's law injurious words and contracts which are naked and devested, and he ordained that plaintiffs should produce their documents if they were denied and were not provable by neighbours in England, because they were foreign, and should prove these documents by battle, or by copy and collation of other seals, or by jurors, according to the election of the plaintiffs.[2]

[1] Stat. West. II. c. 18. [2] Text obscure and translation doubtful.

LIBER V. [DE ABUSIONS.]

1. Des abusions de la lei.

2. Des defautes de la *gr*ande ch*ar*tre.

3. Les rep*r*ehensions des estatuz de M*er*tone.

3B. [Les rep*r*ehensions des estatuz de Marleberge.]

4. Les rep*r*ehensions des p*r*im*er*s estatuz de Westmoustier.

5. Les rep*r*ehensions des secunz estatuz de Westmostier.

5B. [Sur lestatut de Gloucestre.]

6. Les rep*r*ehensions de Circumspecte agatis.

7. La rep*r*ehension de novel estatut de marchanz.[1]

[1] Here follows *Incipit liber quartus de abusions.*

BOOK V.

OF ABUSES.

Ch. I. Abuses of the Law.

There are some who say that, while other realms make use of written law, England alone makes use of her customs and usages as law. But between right and wrongful usages there is a great difference; for wrongful usages, which are not warrantable by law nor allowable by holy writ, are not to be followed, *e.g.* the usage of thieves which is the usage to rob and steal. And to set forth certain abuses which are held for usages, and which are frauds on the law and repugnant to right and not avowable by holy writ, is the object of this chapter, which makes a collection of a part of the abuses of the law of persons as a supplement for the knowledge of right law and true usages.

Abuse is disuse or misuse of right usages, turning them into abuse, sometimes by contrariety and repugnance to right, sometimes by excessive use, sometimes by non-use or deficient use, and sometimes by extravagant use.

1. The first and sovereign abuse is that the king is beyond the law, whereas he ought to be subject to it, as is contained in his oath.

2. It is an abuse that whereas parliaments ought to be held for the salvation of the souls of trespassers, twice a year and at London, they are now held but rarely and at the king's will for the purpose of obtaining aids and collection of treasure. And whereas ordinances ought to be made by the common assent of the king and his earls, they are now made by the king and his clerks and by aliens and

others who dare not oppose the king but desire to please him and to counsel him for his profit, albeit their counsel is not for the good of the community of the people, and this without any summons of the earls or any observance of the rules of right, so that divers ordinances are now founded rather upon will than upon right.

3. It is an abuse that the laws and usages of the realm with their occasions are not put in writing, so that they might be published and known to all.

4. It is an abuse that force may be used in disseisins after the third day of peaceable seisin, whereas he is not worthy of the law's aid who, defying judgment, uses force.

5. It is an abuse that nowadays right is longer delayed in the king's court than elsewhere.

6. It is an abuse that any is suffered to be in the realm beyond forty days who is over the age of thirteen years, be he English, be he alien, without being sworn to the king by the oath of fealty and being pledged and put in tithing.

7. It is an abuse that clerks and women are excused from taking this oath to the king, whereas he takes their homage and fealty for land.

8. It is an abuse that an escape from prison or breach of gaol is accounted a mortal sin, for this usage is warranted by no law, and does not obtain anywhere save in this realm and in France, and one is warranted by the law of nature [in attempting to escape].

9. It is an abuse that there are so many forms of pleadable writs, and in particular that the writs are close and not, like the writ of right, patent. Also that they have interlineations and erasures in them and are otherwise vicious.

10. It is an abuse that money is not quarterable, that it is not of fine silver, that it is good tender although the outer circle be not perfect, that it is alloyed by eighteen and a half pennyweights of copper in every twenty shillings.

11. It is an abuse that the king takes more than twelve pence on the change of every pound.

12. It is an abuse that any pound should be suffered to weigh twenty-five pennyweights or more than twelve ounces (?).

13. It is an abuse that treason is not more commonly attainted by appeals than is the case.

14. It is an abuse that a man who has committed homicide of necessity, or for the peace, or in self-defence, is taken or detained until he has purchased the king's charter of pardon, just as though it were a case of misadventure.

15. It is an abuse that the movable goods of fugitives are held as forfeited before they have been attainted of felony by outlawry or otherwise.

16. It is an abuse to outlaw a man before an inquest of his neighbours has been taken as to his ill repute.

17. It is an abuse that men attainted of felony are suffered to be approvers and make accusations against lawful men; and to suffer clerks, women, children, and others who cannot fight to be approvers.

18. It is an abuse that anyone, save coroners, should receive the appeals of approvers, or to suffer them to make appeals more than once, or under compulsion or at the instigation of enemies, or in some other false manner.

19. It is an abuse that justices drive a lawful man to put himself upon his country when he offers to defend himself against an approver by his body.

20. It is an abuse to drive folk who are appealed by approvers to an acquittal, when the approver denies his appeal and they are not otherwise indicted, or to drive them to an acquittal after the approver's lie has been attainted, or after the approver's death.

21. It is an abuse to suffer an approver to live after he has been attainted as a liar in his appeal.

22. It is an abuse to suffer thieves and felons, proclaimed and notorious, to be defended by sanctuaries.

23. It is an abuse that felons who abjure the realm are not allowed to choose their own port of departure from the

realm. It is an abuse that ports are assigned to them and their journeys limited.

24. It is an abuse that these abjurers are compelled to wade into the sea and raise hue over the sea, and that the footpaths that run beside the great roads are forbidden them, and that they cannot use the roads and hospices in the manner of pilgrims.

25. It is an abuse to adjudge a murder for default of Englishry, whereas the punishment in the case of an Englishman should be less than that in case of an alien.

26. It is an abuse that acquittance for payments made to the king at the exchequer are made by tally and not under the seal appointed for this purpose.

27. It is an abuse that the officers of the exchequer have jurisdiction in matters other than debts due to the king and his fees and franchises, without original writ from the chancery under white wax.

28. It is an abuse that estreats of the exchequer for old debts due to the king lie dormant and are delayed wrongfully, whereas the arrears of sheriffs and other the king's receivers are leviable without delay from those who gave them their places, if they themselves be not sufficient, and the arrears of other debts are leviable from the sureties, if the principal debtors be not sufficient, and the arrears of issues are leviable from the sheriffs or those who gave them their places, and the arrears of amercements are leviable from the affeerers if the principal debtors be not sufficient; and so with fines and other crown debts; whereby it appears that no debt should be long delayed, insomuch that there are some who think that no one is charged with an ancient debt unless this be by malice or by the negligence of the king's officers.

29. It is an abuse that those of the exchequer and others receive attorneys and recognizances without original writ from the chancery, whereas no one can do this who has not jurisdiction.

30. It is an abuse that any should have an ordinary

jurisdiction save free men holding fees, or that anyone should have it save in the courts of the lords of fees and the hundred and county courts.

31. It is an abuse to amerce a man on the warrant of a presentment of a personal trespass, since no one is amerciable save for sin in a real or mixed action.

32. It is an abuse to amerce a man on a presentment made by less than twelve free men who have been sworn.

33. It is an abuse to fix an amercement at a certain sum without the affeerment of free men sworn for this purpose.

34. It is an abuse to affeer amercements in the absence of the amerced, if they wish to be present.

35. It is an abuse to charge the jurors to make presentment of wrongs done by neighbour to neighbour.

36. It is an abuse to believe that a man has a delegated jurisdiction, unless he has a commission stating this.

37. It is an abuse to obey a judge from whose tort one is appealing, as may be seen, *e.g.*, from the ancient writ of right, with its ' et nisi feceris, vicecomes faciet.'

38. It is an abuse that a free man should be elected to serve as the king's officer against his will.

39. It is an abuse that the salaries of pleaders are not fixed.

40. It is an abuse that defendants get no amends from tortious plaintiffs.

41. It is an abuse that pleaders are excused from being sworn according to the articles.

42. It is an abuse to suspend a pleader, if he be not attainted of some foul trespass for which he might be condemned to corporal punishment.

43. It is an abuse to summon a man for a personal sin.[1]

44. It is an abuse to adjudge a man to death for felony on the testimony of suitors, except in cases so notorious that there is no need or room for any answer or jury.

45. It is an abuse to begin an appeal elsewhere than

[1] Summons is appropriate to real and mixed actions.

corouner del contie e *par* ceo piert q*e* brief dappel ad fol fundement cu*m* brief trovie sur errour.

46. Abusion est de lesser p*ar* pleges hom*me* appele ou endite de mortiel pecchie p*r*incipalment.

47. Abusion est a t*er*miner appel de felonie p*ar* juges ordenaires sutiers.

48. Abusions est q*e* totes p*er*sones sunt *com*uniment[1] recevables en appeals de felonie.

49. Abusion est q*e* enfanz dedenz age ne sunt mie touz en garde.

50. Abusion est q*e* genz poent aliener lur heritages de lur heirs plus q*e* le q*u*art ou lur purchaz de fieus ou fere ne poent assignez, car nul ne poet fere assignie ou nul assignie nest contenu el purchaz.

51. Abusion est q*e* les heritages des heires femeles sunt tenues en garde, tut soient de hauberc, cum de heirs malez de sico*m* fem*me* receit son eage al t*er*me de xiiij. anz de eage.

52. Abusion est q*e* gaolers ou lur sov*er*eins despoillent p*r*isons e lur tolent autre chose q*e* armeures.

53. Abusions est q*e* p*r*isons ou autre pur eux paient rien p*ar* lur entres a la gaole ou pur lur issues.

54. Abusion est q*e* p*r*ison soit charge de fer ou mis en peine avant ceo q*e* il soit atteint de felonie.

55. Abusion est q*e* les gaoles ne sunt deliv*r*ees des p*r*isons deliv*er*able saunz delai apres brief purchace.

56. Abusion est a fere hom*me* respondre a la sute le Roi ou il nest endite ne appellie.

57. Abusion est denp*r*isoner autre q*e* hom*me* enditee ou appelle de felonie saunz especial garaunt, si en cas nos pur defaute des pleges ou de meinpernours.

58. Abusion est q*e* justices delivrent p*r*isons nient p*r*is avaunt la date de lur garanz, e desico*m* lentencion le Roi ne se poet estendre forq*e* a ceux qi adunc sunt detenuz en p*r*ison.

[1] Apparently so, but the *com* is ill written.

59. Abusion est qe le bref de odio et atia ne tient lu forqe en homicidie.

60. Abusion e qe cel brief tient lu a enditez.

61. Abusion est qe appellez ou endites de mortel crim sunt sufferz hors de prison par plevine ou ceux qi sunt condempnez a corporele peine einz ces[1] qil facent lur penaunce ou qil eient rachatie par fin de peine peccuniell.

62. Abusion est qe les briefs de sicut alias e sicut pluries passent le seal en cas ou appendreit de fere tieux ministres com inobedienz a droit e al Roi e de charger ent autres a fere tieu maundement.

63. Abusion est a mettre cestes paroles en briefs nisi captus sit per speciale preceptum nostrum vel capitalis justiciarii nostri vel pro foresta nostra e cet. Car nul especial mandement deit passer commun dreit.

64. Abusion est de soffrir qe juges soient actours pur le Roi.

65. E abusion est qe alienes ou autres qi nunt mie jurie feautie al Roi ou infames ou endites ou appeles de crim mortel ou qi nunt point de commission suffisaunt ou ascun apres tort fet ou apres jugement rendu sunt sufferz davoir juresdiccion ou de juger hors des poinz especefies en lur commission.

66. Abusion est qe len pince[2] en appeax par countier les partes del monde e les nons des rues e les hours des jours en countre la pees desicom chescun pecchie est contre la pees e tieles autres paroles nient necessaires.

67. Abusion est de abatre appeals suffisaunz solom lestatut de Gloucestre.

68. Abusion est qe briefs remediaux sunt veniales, e qe le Roi mande as viscountes pernez sieurtie de tant a nostre oes pur le brief, car par le purchaz de tieux briefs porroit lem destrure son enemi torcenousement. E par ceo qe

[1] Corr. *ceo.* [2] Perhaps *puice*; 1642 gives *len preinte.*

tieles fins sunt enroulles e puis courrent en estretes tut ne facent les si damage noun as purchaceours.

69. Abusion e qe foreins ne sont mie recevables en accions par sieurtie des frances qe point nunt poer a trover pleges.

70. Abusion est a destreindre par biens moebles en personeles accions ou le proffit des issus devien tut au Roi e nul proffit nen accrest as pleintifs.

71. Abusion est qe nule pleinte est recevable a audience sanz sute presentee a tesmoigner la pleinte estre verroie.

72. Abusion est qe len dit qe villenage nest mie franc tenement e ceste assise ne siert nient a ejeccion de terme des ans sicom fet de tenement tenu a terme de vie ou a jammes. Car villein e serf ne sont mie .j. en voiz nen significacion, einz poet checun franc home tenir villenage a li e a ces [1] heirs fesant le servage e le charge del fieu.

73. Abusion est a crere [2] qe plener seisine nacrest mie a purchaceour taunt cum li donour i soeffre e lest ces [1] chatieux, car sicom contract se fet de mariage par conjunction de volunties de home e de femme, tut soit qe lun se repent e tantost apres lesposailles sen voudra retrere, mes ne se porra li contract desjoindre, einz isuffist confermement del contract par baille sieuant e par celebracion [3] de esposail, tut ne i eit le purchaceour autre seisine par prise de esplez ne chartre ne escrit pur tesmoigner le contract. E tut fust qe femme tantost apres lesposaille fust ravie e tollecte [4] e li mari sen pleinsist [5] e li ravissour responaunt a la pleinte deist qe li mari naveroit dreit naccion, pur ceo

[1] Corr. *ses*.
[2] *atrere*, MS.
[3] *celbracion*, MS.
[4] Or *collecte*, MS.; *consent* (1642).
[5] *se emplevist* (1642)

qil nen fu unqes seisi plenerement par prise de esplez, ou deist qil memes nestoit unqes hors de seisine de la femme pur ceo qe ele fu vestu de sa robe e par la robe remist il en seisine de voluntie, rien ne li deit lexcepcion valoir pur escuser son tort, nient plus qe en cest cas. Si ascun achat chival e face ent gre al vendour e li vendour face ent le bail a lachatour, tut soit qe li vendour sen repente e de sa force repreigne le chival, e tut[1] qe lachatour nad nule accion pur ceo qe il memes remist touz jours en seisine de voluntie par ceo qe il nen ousta unqes ses chatieus pleinement par une seele qe il i lessa sur le cheval, rien ne vaudreit lexcusacion.

74. Abusion est a quider qe contractz se defunt en biens nient moebles autrement qe en bien moebles.

74 (A). Abusion est a quider qe escriz e chartres facent estat e de user a fere les chartres de feffemenz avant transmitacion de seisine, desicom chartre est vicioune qe testmoint doun estre fet ou la transmitacion nest mie uncore fete de la seisine, car nul doun ne vaut sanz bail de seisine.

75. Abusion est quider qe seisine naccrest mie si tost a purchaceour de soun porchaz com a heir de son heritage, desicom dreit ne requert qe .iij. choses en contractz, conjuncion des voluntiez, satisfaccion al donour, e bail de la possession. E dunc si transmitacion de seisine soit fete al purchaceour par le donour a houre de prime,[2] li purchaceour moerge a houre de tierce, il moert aussi bien seisi del tenement cum il froit de femme ou de cheval, tut nen eit li donour oustie e remue pleinement ses chatieux, ne unqes ne vient de bone foi a dire qe franc tenement apres transmitacion de seisine par simple bail demoert el brief[3] le doneour, qe remeint el tenant apres tel bail del tene-

[1] Corr. *dit* (?).

[2] The MS. begins a new paragraph.

[3] Corr. *chief* (?).

ment, mes si le gre le doneour nen soit mie fet solom les contractz adunc i eide bon foi.

76. Abusion est a quider qe len ne poet recoverir terme de anz ne presentemenz de eglises par ceste assise en maner de disseisine desicom plusours reesons purroient valer a redeseisours.

77. Abusion est qe atteintes ne sunt grauntes en la chancellerie sanz difficultie pur touz faus jurours atteindre aussi ben en totes autres accions personeles reales e mixtes com en petites assises.

78. Abusion est de chacier naam hors del hundred.

79. Abusion est a fere la veuue de naam al baillif, einz suffist pleinte e countier qe uncore en est seisi.

80. Abusion est qe len ne siue torcenouse destresce par moz de felonie e qe len natteint teles robberies a la sute le Roi.

81. Abusion est qe dreit sacorde a vicious contractz e as defenduz e medlees de pecchie. Nest mie usure pecchie? Nest mie enprisonement pecchie? Coment se poet dunc obliger a usure ou a enprisonment ou a disseisine sil ne pecchie?

82. Abusion est qe avoesons de eglises soient alienez de dreit saunz par doeires[1] par gage ou par ferme ou soit partable.

83. Abusion est qe fermes se funt a termes de plus de xl. ans par quoi qe continuance de seisine e longur de tens desherite nul homme.

84. Abusion est qe nul tere est lessee a ferme en fieu ou a anz rendant rent par an au plus qe la value de la quarte partie.

85. Abusion est de utlaguer home pur defaute en cas ou la principale cause nest mie felonie.

86. Abusion est qe auditours sunt donables par les seignurs pur aconte oir saunz lassent des baillifs.

[1] *sont aliens de droit sans perdans par gage* (1642). But read *droit saunc*.

87. Abusion est qe bailifs nunt nul recoverer des damages des torcenouses auditours.

88. Abusion est qe regard se fet as persones, quant au tiel dreit nest ordene as bailifs ver lur seignurs com le revers endreit des dettes dues de lun a lautre.

89. Abusion est qe homme puisse chalenger celi por soun naif a qi il ne trova unqes sustenaunce, desicom serf nest mie serf forqe taunt qil est agarde, e de si qe nul ne poet chalenger son serf pur serf, tut soit il en sa garde, sil ne troeve sustenaunce a son serf qi le vaut mees e terre en son fieu ou il purra gaigner sa sustenaunce ou autrement le retient en son service.

90. Abusion est qe serfs sunt franc pleges ou pleges de franc home.

91. Abusion est soffrir qe autriz serfs soient en autriz veuues.[1]

92. Abusion est qe seignurs soeffrent lur serfs pledir ou estre emplede sanz eus, car serf nest mie amerciable en autri court por ceo qe il ne poet ren perdre com cil qe rien nad propre.

93. Abusion est a tenir villeins serfs, e ceste abusion norrust[2] grant destruccion de poure poeple, grant poverte e grant pecchie.

94. Abusion est qe hume soit somons qe nest fiu tenaunt.

95. Abusion est a somondre homme aillurs forqe e le fieu contenu en la demande, si fieu isoit contenu.

96. Abusion est qe homme travaille a ces propres custages par nuli somonse personele.

97. Abusion est qe justice ou autre face somonse qe nest fieu tenaunt en meme la contie.

98. Abusion est de somondre homme sanz garnir le renablement sur quele chose respondre.

[1] Or *venues*. [2] *merust* (1642).

99. Abusion est qe fauses causes sunt recevables de essoignez de si qe dreit nallouue fausserie ne [1] nul cas.

100. Abusion est qe essoigne est allouue en personel accion al defendaunt, desicom len est meinpris daver en court par meinpernours.

101. Abusion est a resceivre essoigne retee [2] par enfant dedenz age.

102. Abusion est a receivre atorne ou nul poer nest donee a ceo fere par brief de la chauncellerie.

103. Abusion est a resceivre attorne ou la parole nest mie attame par presence des parties si noun en cas ou len fet attorne general.

104. Abusion est qe nul puisse fere attorne en personeles accions ou corporele peine est agardable.

105. Abusion est a resceivre excepcions en jugement si ele ne soit suffisaument pronuncie, car de orbe excepcion [3] sourt rerement cleer jugement.

106. Abusion est de allouuer garant vouchir en larcin ou en autre personele accion.

107. Abusion est qe juge assigne ne face monstraunce as parties pledauntes de son garant ou de son poer quant il le demanderent e nemie soulement la oye mes linspeccion.[4]

108. Abusion est qe justices e lur ministres qi occient la gent par faus jugement ne sunt destruz al foer dautres homicides. Que [5] fist le Roi Alfred prendre [6] xliiij. justices en un an taunt cum homicides pur lur faus jugemenz.

Il pendi Watling pur ceo qe il avoit juge Sidulf a la mort pur le recet de Edulf son fiz qi puis saquita del fet principal.

Il pendi Signer qi aveit jugie Ulf a la mort apres suffisante aquitaunce.

Il pendi Eadwine pur ceo qe il jugea Hathewi a la mort saunz lassent de tuz les jurours en cas il se estoit mis en la juree de xii homes, e pur ceo qe les troiz le voloient sauver

[1] Corr. *en*.
[2] Corr. *jetee*.
[3] *order de exception* (1642).
[4] Last four words omitted (1642).
[5] *Eue*, MS.
[6] Corr. *pendre*.

countre le ix si remua Eadwyne les trois e mist autres trois es quex cest Hathewi ne se mist nient.

Il pendi Coel pur ceo qe il jugea Yve a la mort qe fu arragie.

Il pendi Malmere pur ceo qil jugea Prat a la mort par faus conoissaunce qil fit de felonie par desepparaunce.

Il pendi Athulf pur ceo qil fit pendre Copping avant lage de xxj. ans.

Il pendi Markes pur ceo qe il jugea Duning a la mort par xij. nient jurie.[1]

Il pendi Oscelin pur ceo qil jugea Seaman a la mort par vicious garant fondie sur fausse suggescion qi supposa celi Seaman estre en prison par le garaunt einz ces qe il i esteit.

Il pendi Billing pur ceo qil jugea Lefston a la mort par fraude en ceste manere. Il dit al poeple Seez tuz ius forqe cist qe occist le homme. E pur ceo qe Lefston ne sassist mie oveqe les autres, li comanda de mener[2] pendre, e dit qe assez le conust quant il ne sassist.

Il pendi Sefoul pur ceo qil jugea Ording a la mort cum non respondu.[3]

Il pendi Thurstone pur ceo qil jugea Thurgner a la mort par verdit denqueste prise doffice saunz sa mise.

Il pendi Athelstone pur ceo qe il jugea Herbert a la mort pur pecche nient mortiel.

Il pendi Rumbold pur ceo qe il jugea Lifchil a la mort en cas nient notoire saunz appel e saunz enditement.

Il pendi Rof pur ceo qil jugea Dunston a la mort pur eschap de prison.

Il pendi Freberne pur ceo qil jugea Harpin a la mort ou les jurours furent en dote de lur verdit. Car en doutes deit len einz ces sauver qe dampner.

Il pendi Sibright qi jugea Athelbrus a la mort pur qe il ne forni mie j. sien faus jugement[4] mortiel.

[1] *jurees* (1642). [2] *mesme* (1642) [3] Corr. *non defendu* (?).
[4] *il fauxa mie une si en faux judgment* (1642).

He hanged Hale, for that he saved from death Tristram the sheriff, who had taken wine for the king's use, because between taking what is another's without his will and robbery there is no difference.

He hanged Arnolt, for that he saved bailiffs who robbed folk by colour of distress, some of them by alienating naams and others by extortion of fines, because between the extortion of a fine for the release of a naam and robbery there is no difference.

He hanged Erkenwold, for that he hanged Franling for no other cause than because he taught one whom he had vanquished in battle to say the word 'craven.'

He hanged Bemond, for that he had Garbolt's head cut off by a judgment given in England on an outlawry in Ireland.

He hanged Alkemund, for that he saved Cateman, who was attainted for hamsoken, by treating it as a mere case of disseisin.

He hanged Saxmund, for that he hanged Berild in England where the king's writ ran, for a deed done in a part of the same land in which the king's writ did not run.

He hanged Alflet, for that he adjudged to death a clerk over whom he could have no cognisance.

He hanged Piron, for that he judged Hunting to death, because he caused a judgment to be executed before the fortieth day, pending an appeal to the king by writ of false judgment.

He hanged Dilling for hanging Edous, who had slain a man by misadventure.

He hanged Oswyn, for that at night time he judged Blithe to death.

He hanged Osbert, for that when not in a consistory he judged Fulcher to death.

He hanged Vivelin, for that he hanged Iselgrim by warrant of an indictment that was too general.

He hanged Horn, for that on a prohibited day he hanged Swein.

He hanged Bulmer, for that he judged Gerent to death for the larceny of a thing that he had received by bailment.

He hanged Thurbern, for that he judged Osgot to death for a deed of which he had already been acquitted as against the same plaintiff; and Osgot offered to aver the acquittal by a jury, and Thurbern would not receive the allegation of acquittal because Osgot did not offer to aver it by the record.

He hanged Wolfston, for that he judged Hubert to death at the king's suit for a deed which Hubert had confessed, whereas the king had pardoned his suit; but Hubert had no charter of pardon, but vouched the king to warranty, and in addition offered to aver the pardon by the enrolment in the chancery.

He hanged Osketil, for that he judged Culling to death on the record of the coroner, where an allowable replication was not allowed him. The case was this:—Culling was taken and tortured until he confessed a mortal sin, and this he did to be quit of further torture; and Osketel judged him to death on his confession made to the coroner, without trying the truth of the allegation as to the torture and the other facts.

And besides this, the coroners, officers, assessors, and those who tortured folk, and those who could have disturbed the false judgments but did not do so, were hanged whenever the justices were hanged, for King Alfred hanged all the judges whom he could attaint of having falsely saved a guilty man from death, or falsely hanged folk against law or in the teeth of a reasonable 'exception.'

He hanged the suitors of Talebot for judging a man to death in a case that was not notorious, though he was guilty; for in such cases no one in the realm can be judge save the king and his commissioners, except those lords into whose fees the king's writs do not run.

He hanged the suitors of Dorchester for judging a man to death on the verdict of jurors of their franchise for a felony committed outside the franchise, and of which they could take no cognisance because it was a 'foreign' plea.

He hanged the suitors of Cirencester for keeping a man in prison until he died in their prison, when that man was willing to acquit himself by a jury of 'foreigners' from the place where, as was alleged, he had sinned feloniously.

In his time the suitors of Ancaster lost their jurisdiction, besides suffering other punishment, because they held a plea which, by the usages of the realm, it was not law for suitors as judges ordinary to hold.

In his time Colgrim lost his franchise of infangenetheof because he would not send to the common gaol of the county a thief caught within his franchise for a felony committed outside in the geldable.

In his day Botolf lost his view of frankpledge, because he charged the jurors with articles that did not belong to the view, and amerced folk in personal actions in which no pecuniary punishments should be inflicted.

And as he rendered mortal rewards to criminal judges for their wrongful mortal judgments, so in the same manner for wrongful venial judgments he rendered imprisonment for wrongful imprisonment, and like for like as regards other punishments; for he delivered Thedwad to prison because he adjudged [men] to prison for sins that were not mortal, and he delivered Cantward to prison because he imprisoned Old for a debt owed to the king.

He delivered Sithing to prison because he imprisoned Herbold for the sin of his wife.

And again, he had Harulf's hand cut off because he saved the hand of Aruccok, who was attainted before him of having feloniously cut off the hand of Richold.

And so he adjudged that Edulf should be wounded for not having adjudged to wounding Arwold, who was attainted before him for having feloniously wounded Aldous, whereas no licence for an accord had been obtained.

In the case of smaller sins he did not pass such severe judgments,[1] but disinherited his justices and deposed them, according to the articles of his statutes, whenever he could

[1] Text obscure.

qil avoient passie les poinz ou les metes de lur delegacie ou de lur commission ou aveient fet reles de fin ou damerciement ou dautre chose qe appendi au Roi, ou aveient relessie peine ou encrue outre le dreit, ou procurie dencrestre, ou plede saunz garaunt, ou en la propriete par garant de bref ou de pleinte de la possession, ou le revers, ou en la veniale accion par motz de felonie ou le revers, ou aveient vee a nule partie transcrit de son ple a la jornee, ou ascun des parties torcenousement delaie, grevee ou autre tort fet en desallouance de renable excepcion de partes ou de jugement.

En son tens poet chescun pleintif aver commission e brief a son viscounte al seignur del fieu ou a certein justice assignee sur chescun tort. En son tens se hasta dreit de jour en jour issi qe outre xv. jours nestoit nule defaute ne nul essoine ajornable. En soun tens poieient les parties emporter les partes de lur plez les seals les juges ou des parties adverses. En son tens nestoit nul brief de grace einz furent touz brefs remediaux grantables com de dette[1] par vertu de serement. En son tens soloient les juges prendre de chescun actour xii. d. a la jornee. En son tens recovererent pleintifs ne mie soulement damages des issues des possessions e des fieus einz recovererent custages, travax, blemissemenz[2] de fames e quant qe len poet loialment taxer qe len estoit meins puissant par lencheson de tiel fet.

109. Abusion est qe lem soeffre qe tant de multitude des clers sunt sufferz destre ordenez, par quoi la juresdiccion le Roi est descruz.

110. Abusion est qe clers qe nunt[3] lesse ceo qe al secle appent tienent lais fieus.

111. Abusion est qe len tent plez par dimenches ou par autres jours defenduz ou devant le soleil levie ou nutantre ou en deshonest lu.

112. Abusion est qe nul respoigne de felonie ou dautre personel trespas infamatoire avant son eage de xxi. an.

[1] Corr. *droit* (?).
[2] *custages quant aux blemishments* (1642).
[3] Corr. *unt*.

112 [A]. It is an abuse that anyone should be put to answer while he is in prison, unless this be for his advantage, until he is acquitted of the deed for which he is in prison.

113. It is an abuse that when an affirmative action is met by an affirmative answer or exception, the proof of the first [the plaintiff's] affirmative is received, unless this be done in favour of salvation.

114. It is an abuse that a man is accused of matters touching life or limb *quasi ex officio* without suit and without indictment.

115. It is an abuse if a justice will not show the indictment to the indicted if they demand it.

116. It is an abuse if one be put to answer in England for a deed done out of the realm, or *vice versa*, or to answer in a privileged place where the king's writ does not run for a thing done outside, and *vice versa*, or to answer in a franchise for a thing done in the geldable, or *vice versa*.

117. It is an abuse that rape is a mortal sin.

118. It is an abuse that rape is extended to women who are no maids.

119. It is an abuse to outlaw a man if it be not for felony.

120. It is an abuse to arrest in England one outlawed in Ireland or elsewhere outside the realm, whereby he is ousted of his fee of having[1] the right judgment of the suitors who are his judges ordinary.

121. It is an abuse to plead about a time so remote that no testimony of sight and hearing can be given about it, and as a general rule such testimony cannot be had after forty years.

122. It is an abuse to found a personal action on what happened before the last eyre.

123. It is an abuse of the writ of account [*Monstravit de compoto*] to enable a man to wrongfully imprison another.

[1] Translation doubtful.

a fee or the service issuing from a fee for default in a personal or real action, for outlawry or loss of the fee is punishment enough.

149. It is an abuse that sheriffs will not execute vicontiel writs until the plaintiffs have found pledges to prosecute, where no mention of taking surety is made in the writ.

150. It is an abuse to distrain by movable goods for arrears of service issuing from a fee, whereas no distress should be made save by the fee.

151. It is an abuse that a tenant can without punishment enfeoff a third person in the fee of his lord to his lord's prejudice, or do or say any other thing against the terms of his oath of fealty.

152. It is an abuse to suffer a hired champion to be received as a witness.

153. It is an abuse that one has no recovery against the king or queen for a tort save at the king's will.

154. It is an abuse to adjudge a man to several punishments for one trespass, *e.g.* to both corporal punishment and ransom, for ransom is but a redemption of a corporal punishment by a money fine.

155. It is an abuse that men made infamous by sin are not rejected from taking oaths and from dignities and other honours. And other abuses there are which will appear from place to place to one who reads the foregoing books.

[*Ch. II. Of the Great Charter.*]

Whereas the law of this realm founded upon the forty articles of the Great Charter of Liberties is damnably disregarded by the governors of the law and by subsequent statutes, which are contrary to some of these articles, therefore to demonstrate the defects of these articles and the errors of certain statutes I have put on record this chapter concerning the defects and reprehensions of statutes. And first of the defects in the articles of the Charter:[1]—

[1] In the margin we give references to the various chapters in the Charter of 1225 upon which our author comments.

138. It is an abuse to suffer an attorney to surrender [the land in demand] or compromise the action.

139. It is an abuse to assign justices [to hear pleas] between such and such parties, save by writ or in the king's presence, unless this be done by the assent of the parties.[1]

140. It is an abuse to issue writs of *Audita querela*, of *Conspiracy*, and so forth, which do not contain the substance of the complaints.

141. It is an abuse that the justices of the Bench meddle with other pleas than such as relate to the infraction of fines, grand assizes, pleas translated from minor courts, darrein presentments, or the alienation of the fees and rights of the king and queen.

142. It is an abuse to use a *Pone* before the cause has been discussed, in case the parties challenge the writ; for the lying purchaser [of the writ] should take no benefit by his lie.

143. It is an abuse to sue out a grand distress in pleas begun by attachments, whereby the king, not the plaintiff, gets the profit.

144. It is an abuse that trespassers who have no property are not banished, as they used to be, from vills, counties, fees, and hundreds.

145. It is an abuse to hold that either in a real action or in another a *petty cape* can give any title other than *salvo iure cuiuslibet*.

146. It is an abuse that the issues of grand distresses in mixed actions do not come to the profits of the lords of the fees and others who have courts, just as they come to the king when similar actions are begun in his court.

147. It is an abuse to suppose that the same punishment should be awarded to mainpernors as to the principals who make default, for in some cases the former should only be amerced.

148. It is an abuse to amerce a man who is impleaded for

[1] Translation doubtful.

de service issant de fieu pur defaute en personele accion ou reale. Car utlaguerie ou perte del fieu suffist pur peine.

149. Abusion est qe viscountes ne funt point dexecucion as briefs viscontals einz ces[1] qe les pleintifs eient trovez pleges de sure, ou nule mencion ne se fet de sieurtie prendre.

150. Abusion est a destreindre pur arrerages de service issant de fieu par biens moebles, ou nule destresce ne se dust fere forqe par le fieu.

151. Abusion est qe tenaunt pusse sanz peine feffer la tierce persone el fieu son seignur en prejudice de li ou autre chose fere ou dire contre les poinz de son serement de feautie.

152. Abusion est a soffrir champion louuiz estre recevable en testmoinage.

153. Abusion est qe nul ne ad recoverer del tort le Roi ou de la Roine si non a la voluntie le Roi.

154. Abusion est a juger homme a divers peines pur un trespas sicom a corporele peine e a ranceon, desicom ranceon nest forqe redempcion de peine corporele par fin de deners.

155. Abusion est qe genz defamees par pecchie ne sunt rebotes de seremenz fere e de dignitiez e dautres honurs. E autres abusions perent par lus qi bien entent la livre avant escritz.

[*Ch. II.*] *Des Articles* [*de la Grande Chartre*].

Cum la lei de ceste reaume fondee sur xl poinz de la grande chartre des fraunchises soit desuse dampnablement par les guiours de la lei e par estatuz pus fetez contrsianz a ascuns de ces poinz, pur monstrer les defautes des poinz avantditz e les errours dascuns estatuz ai jeo mis en memorial cest chapitre des defautes e reprehension des estatuz ; e primes des defautes des poinz de la chartre.

[1] Corr. ceo.

Al point qe leglise dengleterre eit ces[1] dreiz entiers e ces[1] fraunchises desblemies serreit peine neocessaire a ordener corporele, e nomement as lais juges, ministres le Roi e autres qi jugent clers en mortels crims e as corporeles peines infamatoires, e detienent lur biens apres lur purgacion, e as ceux seculers juges qe se medlent a conoistre en matrimoigne ou testament ou dautre espiritualitie.

Pur lautre point proschein est chescun franc homme del reaume enheritie des franchises de la chartre, e dunt chescun est disseisi com de soun franc tenement qi nen est jugie solom les poinz suanz, e tient lu recoverer damages par lassise de norelle disseisine.

Li tierz point semble defectif, car aussi com le relief de countie enterre fet a decrestre en la persone celi qi meins en tient, aussi semble qe tel certein fet a encrestre en taunt com countie plus en tient, issi qe tendra ij. contees. E qi tendra countie e baronie paie a foer de contie e estre ceo a foer de baron. E issi dautres fieus si expres ne soit a la chartre qe la fin de cent livres ne soit point encrue pur nul encrees de plus de fieu e issi des autres certeins.

Li quart point est defectif, car tut soit qe cel point soit fondie sur dreit pur lier les seignurs des fieus as garanties par lapprise de tieux homages le quel qe il les prissent des droiz heirs ou non, pur ceo nest mie expres qi devient estre gardeinz des fieus vacanz e avoir les issues el moien tens en cas ou les dreiz heirs defoient[2] lur seignurs ou ne poent ou ne vollent lur homage fere.

Li point des gardes est defectif en taunt qe nule difference nest expresse par entre les heirs madles e les heirs femeles. Car feme ad son plener eage quant ele est pleinement de xiiij. anez e les vij. outre ne furent primes ordene forqe

[1] Corr. ses. [2] defuont (1642).

As to the article 'Quod ecclesia Anglicana . . . habeat omnia iura sua integra et libertates suas illaesas,' some corporal punishment should be ordained, and in particular for the lay judges, royal ministers, and others who judge clerks for mortal crimes and to infamatory corporal punishments, and detain their goods after their purgation, and for those secular judges who meddle in the cognisance of matrimony or testament or other spiritual matters. c. 1

By the next article every free man of the realm is heritably entitled to the franchises of the charter, and therefore everyone is disseised of his free tenement who is not judged according to the following articles, and in such a case he ought to recover damages by an assize of novel disseisin.[1] c. 1

The third article is defective, for as the relief due for a whole county is to be decreased in the case of one who holds less, so seemingly this certain sum should be increased when an earl holds more than one county, *e.g.* two counties. And he who holds a county and a barony should pay as for a county and also as for a barony. And so in the case of other fees, if it be not expressed in the charter that the fixed sum of £100 is not to be increased by reason of any increase of the fees; and so with the other fixed sums. c. 2

The fourth article is defective, for albeit it is founded upon law that the lords of the fees may be bound to warranty by the receipt of such homages, whether they receive them from the right heirs or no, still it is not expressed that they ought to have the wardship of vacant fees and take the issues during the mean time in case the right heirs defy their lords or cannot or will not do homage. c. 3

The article about wardship is defective, since no difference is expressed between heirs male and heirs female; for a woman attains full age on accomplishing fourteen years, and the seven remaining years were ordained in the cc. 3, 4

[1] Every breach of the charter by the king should give an assize of novel disseisin to the party grieved.

Tut soit qe le point qe comande qe petites assises soient prises en lur countiez estoit fundie sur laisement des jurours, uncore est il desusie en taunt qe les justices funt les jurours travailler es plus foreins marchies des contiez, ou mieux vaudreit qe justices travaillassent de hundred en hundred qe de travailler taunt de poeple.

Li point des amerciemenz est desusie par justices, viscountes, baillifs, seneschauz e autres qi amercient la gent en certein a lur voluntie en ceste manere, metez tiel a taunt pur despit ou pur trespas, sanz peser le trespas e sanz affoerement de genz a ceo jurees e saunz especefier la manere e la qualite del despit. Dautrepart ou les affoerours duissent estre esluz par lassent des amerciez e en lu comun, la funt tieux sovereins venir a lur oustieux affoerours cum eus memes volent [1] mettre e funt acrestre e amenuser les amerciemenz a lur voluntie.

Li point qe defent qe rivers ne soient mises en defens est desusie, car plusours rivers sont ore appropris e engarnes e mises issi en defens qe soloient estre comuns a peecher e user el tens le Roi Henri le premer.

Li [2] qe defent qe viscountes, chasteleins, corouners ne baillifs ne tenent les plez de la coroune ne semble mie necessaire, car apeax de felonie sont par droite naturele [3] attamables devaunt corouners e les exigendes continuables e les jugemenz des utlaguaries pronunciables, e pur ceo averoit cel point mestier de plus de letre si qe sa entencion fut expresse.

Par la fin del point des biens moebles as morz piert qe accion accrest as vedves e as enfanz des morz a demander lur renables parties des chatieux lur piere esloignez.

Ceo qest defendu a conestables a prendre lautri defend droit a tote gent de si qe nule difference nest par entre prise de lautri maugrie soen e robberie, li quel qi cele prise soit

[1] Apparently *:nolent*, MS. [2] Supply *point*.
[3] *droit nient* (1642).

Albeit the article which commands that petty assizes be taken in their own counties was made for the easement of jurors, none the less it is disregarded, for the justices cause the jurors to journey to the extreme boundaries of the counties, whereas it would be better that the justices should journey from hundred to hundred and not labour so many folk. c. 12

The article about amercements is disused by justices, sheriffs, bailiffs, stewards, and others, who amerce men at fixed sums according to their will and pleasure, saying, 'Put down so and so for so much, for a contempt, or for a trespass,' without weighing the trespass and without any affeerment by men sworn for the purpose, and without specifying the manner or quality of the contempt. And again, though the affeerors ought to be chosen with the assent of those who are amerced and in a public place, these magnates cause to come to their own houses such affeerors as they please and increase and decrease the amercements at pleasure. c. 14

The article against putting rivers in defence is disused, for divers rivers are now appropriated and warrened and put in defence which were open for fishing and using in the time of King Henry I.[1] c. 16

The article which forbids sheriffs, castellans, coroners, and bailiffs to hold pleas of the crown seems unnecessary, for by natural law appeals of felony ought to be commenced before the coroners, and the process of exigend should go on before them and outlawries ought to be pronounced by them; thus there should be more words in this article to express its intention. c. 17

By the last words of the article about the movable goods of dead men, it appears that an action *de rationabili parte bonorum* should accrue to the widow and children if the goods of the father be eloigned from them. c. 18

As to the ordinance that constables are not to take what belongs to others, this is a rule of right which extends to all mankind, for there is no difference between taking what is another's against his will and robbery, whether the cc. 19, 20

[1] But it is the time of Henry II. that is mentioned in the Charter.

par garant fondie sur personele accion. Distinctez, car si laccion soit veniale nul enprisonement ne iest avoable si non pur defaute de meinpernours, e issi piert qe nul nest enprisonable pur dette. E si ascun estatut soit fet repugnaunt a cest point, ou pur la dette le Roi ou pur lautri, ne fet point a tenir. Nul ne soit utlaguie, fet a entendre si noun pur mortele felonie dunt len est mescru par serement de vesins a ceo jurez aussi com doffice al foer qe len use en eires. E par ceo se destrut en lestatut de utlaguer homme pur arrerages dacontes e de tuz autres tieux estatuz. E ceo qest dit nul ne soit exulle ne destrut, est interpretable en cest entendement, qe len eit accion dappeller toux juges e tuz sutiers, tous assessours e touz fornissours qi destruent homme contre le dreit cours e les dreites riules de lei. Dautrepart ceo qe le Roi defent qe nul ne soit deseisi de son franc tenement, de ces [1] franchises ou de ces [1] fraunches custumes, est issi a entendre, qe len recoevre par lassise de novelle disseisine tut manere de franc tenement e tote manere de possession reale de fieu ou de fraunchises dunt len est engite si par loiall jugement non. E cest mot si non par loial jugement fert a totes les paroles de cest estatut.

Cest point qe li Roi grante a soun poeple qil ne vendera dreit noiera [2] ne delaiera est desusie par le chaunceller qi vent les briefs remediaux e les apele briefs de grace, e li chaunceller del eschecker qi vee aquitance souz la verte cire des paiemenz fez al Roi, e tuz ceus qi delaient dreit jugement ou autre dreit.

Li point del congie de la demoere des marchaunz aliens est issi entendable, qe ceo ne soit en prejudice des villes ne des marchaunz d'Engleterre, e qil soient serementes al Roi e pleviz sil demoerent plus de xl. jours.

[1] Corr. *ses*. [2] Corr. *ne recera* (?).

Nullus capiatur, none is to be taken unless it be by warrant founded on a personal action. (Here we must distinguish, for if the action is venial, no imprisonment is justifiable save for default of mainpernors, and so it appears that none can be imprisoned for debt, and if any statute be made repugnant to this article, whether it concern debts due to the king or debts due to others, it is not to be obeyed.) *Nullus utlagetur*—here one must understand 'unless it be for mortal felony whereof one is found suspected by the oaths of one's neighbours who are sworn *quasi ex officio* in the manner customary in eyres.' And this clause annuls the statute which outlaws a man for arrears on an account, and other similar statutes.[1] *Nullus exuletur aut destruatur* —this is to be interpreted thus: that one has an action to appeal all judges, all suitors, all assessors, all executants of judgments who destroy a man against the right course and the right rules of law. And then as to the king's prohibition, *Nullus disseisietur de libero tenemento suo vel libertatibus vel liberis consuetudinibus suis*—this is to be understood thus: that one can recover by an assize of novel disseisin every manner of free tenement and every manner of 'real' possession of a fee or of franchises wherefrom one is ejected otherwise than by lawful judgment. And this clause *nisi per legale iudicium* has reference to all the clauses of this article.

The article whereby the king grants to his people that c. 29
he will not sell, nor deny, nor delay justice, is disregarded by the chancellor who sells remedial writs and calls them writs of grace, and by the chancellor of the exchequer who refuses to give acquittances under green wax for payments made to the king, and by all those who delay right judgment or other right.

The article about the residence of alien merchants is to c. 30
be so understood that this residence is not to be prejudicial to the towns nor to the merchants of England, and so that the alien merchants are to be sworn to the king and pledged if they stay beyond forty days.[2]

[1] Stat. West. I. c. 11. [2] The Charter says nothing of the forty days.

Le derreine point est de tele vertu e de tele entendement qe sicom le Roi ad les conoissaunces des trespas fez en ces[1] fieus aussi eient tuz fieu tenaunz lur courtz e les conoissaunces des trespas fez en lur fieus e aussi ben de reales accions, personeles cum de mixtes.

[*Ch. III.*] *Des articles sur lestatut de Mertone.*

Ascuns poinz sont repernables entre les estatuz fetz a Mertone pus la dite chartre fete, e nomeement le point de redeseisines, desicom dreit nateint nul trespassour par enqueste de office, e pur ceo qe respons porroient par cas valer a tieux tenanz e seroient par dreit alloables tendreit lu assises al foier de novel disseisine. E ceo qest dist qe redeseisours soient pris e detenuz en prison e puis seient reinz[2] nest forqe abusion de dreit qe voez qe cheecun qe iert atteint de personel trespas soit puni par peine corporele sil ne la puisse reimbre[3] par deners. E ceo qest dit de cest estatut fet a entendre de trestuz les estatuz fez apres la primere confeccion de la grande chartre fete el tens le Roi Henri le tierz, car nest mie droit qe le[4] soit puni pur un fet de peine corporele denprisonment ou dautre e estre ceo par peine peccuniele ou par rancon, car ranceon nest autre chose qe rachat de peine corporele.

Li point denprouemenz de gasz e de deserz est repernable cum celi qest fet trop generalment, einz le covendreit aver distinctie, car en plusours lus est qe comuners sunt feffez en tieu manere qe les comuns[5] sunt soulement as tenaunz issi qe les seignurs ne i unt rien forqe le fieu. E en tieux cas est cest estatut prejudicial as comuners e repugnaunt a la grande chartre qe voet qe nul ne soit en-

[1] Corr. *ses*. [2] *remise* (1642). [3] Apparently so with dotted *e*.
[4] Corr. *len*. [5] *que lentier comun* (1642).

The last article has this force and meaning: that as the king has the cognisance of trespasses done in his fees, so also all fee tenants may have their courts and the cognisance of trespasses done in their fees, in all actions, whether real, personal, or mixed.[1]

[*Ch. III.*] *Articles upon the Statute of Merton.*

Some points in the statutes made at Merton after the making of the Charter are to be reprehended, and in particular the clause about redisseisins, for law will not attaint a trespasser by an inquest taken *ex officio*; and since in some cases the tenants [accused of redisseisin] may have a good answer and one that the law allows, the procedure ought to be like that of an assize of novel disseisin. And as to what is said of arresting and imprisoning redisseisors and then of ransoming them, this is a mere abuse, for the law wills that every one attainted of a personal trespass be punished by a corporal punishment if he cannot ransom it with money. And what is said of this statute is to be understood of all statutes made after the first making of the Great Charter in the time of Henry III., for it is not law that anyone should be punished for a single deed by imprisonment or any other corporal punishment, and in addition by a pecuniary punishment or ransom; for ransom is nothing else than the redemption of a corporal punishment. Stat. Mert. c. 3

The article as to the approvement of wastes and deserts is open to reprobation as being too general; for a distinction should have been made; for in some cases the commoners are enfeoffed in such manner that the common belongs to the tenants only, so that the lords have nothing but the fee. And in this case the statute is prejudicial to the commoners and repugnant to the Great Charter, which c. 4

his entry. Our author takes the side of the mesne lords against the king.

[1] This seems a strange perversion of the concluding clause of the Charter, whereby the barons are enjoined to allow to their tenants the same liberties that they have received from the king. Our author favours seignorial justice.

Li point des proclamacions de gardes est repernable cum celi qi est tut fondie sur errour sicom piert el chapitre de defautes.

Li point des redeseisours est repernable, car nul mandement especial ne deit passer comun dreit, ne nul peine denprisonement nest jugeable forqe[1] pur torcenous enprisonement.

Li point de doaires est repernable de si qe dreit se dust plus hastier en la court le Roi qe aillors.

Li point suant dattachemenz e des destreces est repernable, car en plez dattachemenz nest nule essoine allouable pur les defendaunz ne nul tiel ordre de destreces nest tenable solom dreit.

Li point qe defent qe nul ne face jurer ses tenaunz est repernable par ceo qe nule peine ni est ordene, e par ceo quil ni ad nule forprise, car plusours cas sunt ou genz deivent jurer tut ne voient il le comandement le Roi, sicom devant justices des forez, devaunt corouners e devant eschaetours, e sicom as tours de viscountes, as veuues de franc pleges, e sicom affoerours e as deliverances des gaoles.

Li point qe comande la capcion de ceux qi sunt tenuz daconte est repernable desicom laccion est mixte e voet somonse e nient personele.

Li point de gastours de fermes est repernable, car gast est personel trespas e demande personele peine e ne mie simple amerciement.

Ch. IV. Articles sur lestatut de Westmoustier.

Plusours autres poinz sunt repernables es estatuts primers de Westmoustier, car les poinz tochanz genz de religion sunt matire aporchaz denemis[2] e purchacie sur fundement de avarice plus qe a lur avantage.

[1] *forqe* repeated.

[2] *mater pur purchaser deniers* (1642).

The article as to the proclamation of wardships is repre- c. 7
hensible, being altogether founded upon error, as appears in our chapter on defaults.[1]

The article about redisseisors is reprehensible, for no c. 8
special ordinance ought to exceed common law, and the punishment of imprisonment should only be adjudged where there has been wrongful imprisonment.

The article about dower is reprehensible, for right c. 12
should be speedier in the king's court than elsewhere.

The following article about attachments and distresses c. 12
is reprehensible, for in pleas prosecuted by attachments no essoin is allowable to the defendants, and no such order of distresses holds good according to law.

The article which forbids a man to cause his tenants to c. 22
swear is reprehensible, because it specifies no punishment, and because it makes no exception; for there are divers cases in which men ought to swear, although they do not receive the king's command, as *e.g.* before the justices of the forests, before coroners, before escheators, and at the sheriffs' turns and views of frankpledge, and as affeerors, and at gaol deliveries.

The article which commands the arrest of those who c. 23
are bound to render account is reprehensible, for the action is mixed, not personal, and should be commenced by summons.

The article about farmers who commit waste is repre- c. 23
hensible, for waste is a personal trespass and demands a personal punishment and not a simple amercement.

[*Ch. IV.*] *Articles of the Statute of Westminster I.*

There are divers other articles in the first statutes of Westminster which are reprehensible, for the articles c. 1
which concern men of religion are procured by enemies (?), and are founded rather on avarice than on the advantage of the religious.[2]

[1] See above, p. 129.

[2] The chapter in question forbids great men and others to constrain the religious houses to entertain them.

einz ces[1] qil isoit atteint de pecche par quoi il deit estre peine.

Les ordenances des peines de lung enprisonement sunt a reprendre sicom avant est dist.

Li point del orde de utlaguer les principaux avant les accessoires nest mie estatut einz est revocacion de errour.

Li point des plevissables est repernable solom ceo qe dit est es accions. Les peines de lung enprisonment contient errour solom ceo qe avant est dist.

La peine ver le Roi des heires madles mariez sanz le grie lur seignurs liges par entre les xiiij. anz e xxj. an est repernable. Dunt doit le Rei aver amende pus[2] ceo qil nad nule personele sute pur amendes demander?

Li point des heirs femeles contient errour sicom piert en la reprehension del point des mariages de la grande chartre.

Li point des torcenouses destresces dust contenir la peine de robberie.

La peine des ministres deseisours par colour de lur office est repernable pur la simplesce si com piert entre les jugemenz.

Li point qe defent qe viscountes ne preignent[3] est repernable de ceo qe li Roi prent de eus e il ne prenent rien del Roi.

Li point de fieus[4] des clers e des ministres des justices en eires est repernable pur comune grevaunce del people sanz reprise de proffit.

Les peines denprisonement sunt repernables par les reesons avantdites.

Li point de tolunz est repernable par la peine denprisonement e par ceo qe tolunz ne sunt establiz en certein.

[1] Corr. *ceo.* [2] Corr. *pur.* [3] Supply *rewards* (1642). [4] *fines* (1642).

to pain until he is attainted of some sin for which he ought to be pained.

The ordinances denouncing long imprisonments are reprehensible, as has been said above. c. 13

The article about the order of outlawry—that the principals be outlawed before the accessories—is no statute, but the revocation of an error. c. 14

The article about the replevin of prisoners is reprehensible, as has been said above in our treatise on actions. Long terms of imprisonment are erroneous, as has been said above.[1] c. 15

The penalty due to the king in the case of an heir male married between the ages of fourteen and twenty-one years without the lord's consent is reprehensible. Why should the king have any amends when he has no personal suit to demand the amends? c. 22

The article about heirs female is erroneous, as appears in our strictures on the article about marriages in the Great Charter.[2] c. 22

The article about tortious distresses should impose the same punishment as for robbery. c. 23

The article about ministers who commit disseisin by colour of their office is reprehensible on account of its slightness, as appears in our chapter on judgments.[3] c. 24

The article which prohibits the sheriffs from taking reward is reprehensible, because the king takes from them and they take nothing from the king. c. 26

The article about the fees of the clerks and ministers of justices in eyre is reprehensible, because of the common grievance of the people without any equivalent profit. c. 27

The punishment by imprisonment is reprehensible for reasons given above.[4] c. 29

The article about tolls is reprehensible, because of the punishment of imprisonment, and because the amount of tolls is not defined. c. 31

[1] This chapter is the famous statute of bail.

[2] See above, p. 176.

[3] See above, p. 149.

[4] The statute here speaks of deceit committed by pleaders.

Li point de lais [1] en plez dattachemenz est repernable en plusours poinz solom ceo qe piert el chapitre des defautes.

Li point a parpleder briefs sourt de surcharge qe chiet en prejudice des viscountes e de seignurs de fieus e de fraunchises.

E tut ne soient les ij. poinz de deseisines forqe comune dreit e ancien, cest assaver qe chescun poet sure les amendes ou la peine del personel trespas fet a soun predecessour en taunt com a sa accion appent, de quel age qe les parties soient, uncore est li primer repernable en taunt qe les pleintifs nunt nul recovrir as damages fez a lur predecessours ne nule accion forqe al restitucion de la possession. E lautre point est repernable par la simplesce de la peine, einz apendreit solom comun dreit tele peine qe mes [2] ne se teinst lien de homage par entre eus par la forfeture del seignur quant il comensa desheriter soun tenaunt contre le dreit del homage.

La preiere le Roi est repernable pur ceo qil ne dust rien prier countre dreit, einz est la priere des justices qi desirent daver tuz les jours mout a fere.

Li point qe voet qe cil qe est vouchie a garaunt ne doit mie garantir, tut soit il oblige par le fet son auncestre qi heir il est en cas ou il allegge pur li qe rien ne li est descendu de cel auncestre par qi fet il est vouche, est repernable, car solum auncien droit demoerent fieus obligez a la sieute de la dette qe ceux reconoissent as queux les fieux sunt en qi meins qil deviegnent. En meme la manere soloit estre en touz autres contractz ou les contractz furent atteinz ou grantez. Car asset reconust qi par son fet sa

[1] Corr. *de delais.* [2] *jammes* (1642).

The article about delays in pleas prosecuted by attachments is reprehensible at several points, as appears in our chapter on defaults. c. 45

The article about pleading writs to the end[1] is too onerous and is to the prejudice of the sheriffs and the lords of fees and franchises. c. 46

And albeit the two articles about disseisins are but common and ancient law, namely, that everyone can sue for the amends or the punishment of a personal trespass done to his predecessor, according to the nature of his action, of whatever age the parties may be, still the first article is reprehensible because the plaintiffs have no recovery for damages done to their predecessors and only an action for restitution to possession. And the other article is reprehensible because of the slightness of the punishment imposed, for according to common law the punishment should be that the bond of homage should be utterly dissolved between them by the forfeiture committed by the lord when he began to disinherit his tenant contrary to the right of homage. cc. 47, 48

The prayer of the king is reprehensible, for he should pray nothing contrary to law; but this is really the prayer of the justices who desire to have much to do every day.[2] c. 51

[3] The article which says that one who is vouched to warranty need not warrant, albeit he is bound to warranty by the deed of his ancestor, whose heir he is, in case he alleges that nothing has descended to him from that ancestor on whose deed he is vouched, is reprehensible, for according to the ancient law the fees of those who confess a debt remain obliged as security for that debt, into whosesoever hands they may come. And the same rule was observed in all other contracts when the contracts were recovered or confessed in court; for there is recognisance

[1] The statute requires that the justices shall plead out (*parpleydent*) the writs of one day before beginning those of another.

[2] The statute ends with a request by the king addressed to the bishops, praying that assizes may be taken in Advent and Lent.

[3] Apparently our author, having done with Stat. West. I., here attacks one chapter (ch. 3) of the Statute of Gloucester (6 Edw. I.).

having no record is a mere abuse, for every lawful testimony is a record and every false testimony is a lie, and other folk may just as lawfully testify as may the justices assigned. Is not this a pretty abuse, to allow that the county courts can have record of outlawries, plevins, mainprises, battles, grand assizes, and so forth, and yet no record of other matters? And to deny that the sheriff or the lord of the fee to whom the king sends his writ can just as well bear record of the processes which take place before him, as can those who call themselves justices, is not this mere error?[1] And as to the causes alleged in writs of *Pone*[2] great errors are suffered, since he who can take cognisance of the principal matter is not allowed to entertain an accessory question, whereas right will not suffer that anyone should profit by a lie or a vicious writ. Again, why should there be more talk of *realiter* in the statute than of *personaliter*, when more attachments are awarded in personal actions than in mixed or real?[3]

The articles about mesne tenures is reprehensible, so far c. 9
as regards the proclamations, and so far as regards the non-acquittance of those who hold by less service than do their 'mesnes.' For put case that *B.* holds a hundred librates of land of *A.* by the service of £20, and gives half of it to *C.* in frank almoign, or in marriage, or by the service of a rose, if then it happens that this *B.* commits a forfeiture or alienates what he has, no remedy is ordained by this statute for *C.*, who has to achieve to *A.* And therefore we must follow the old rule which is set forth in our chapter on judgments.[4]

The statute which gives remedy to the wife who loses c. 3
her right by her husband's default is reprehensible, for the

[1] An outburst in favour of the local courts, which ought to be treated as 'courts of record.'

[2] The *Pone* is the writ for removing a cause from the local to the royal court. The cause for the removal is mentioned in the writ; but apparently the local court has no means of protecting itself against writs obtained by false allegations.

[3] This is a stupid, if not a wilful, misinterpretation of the statute, which uses the word *realiter*, not as a contrast to *personaliter*, but in that sense in which we often use *really* when we say that something is *really true*. The avowant in the action of replevin is *really* rather plaintiff than defendant.

[4] See above, pp. 129, 130.

perpetuity.[1] And those who receive clerks who are presented to churches in prejudice of those to whom the greater perpetual right belongs are bound to make restitution in damages. And those who have to pay such damages can recover them from the jurors [?] who made certificate about the right of patronage. And thus it appears that the punishment falls rather upon the bishops than upon the presenters. And as to what is ordained about punishment by long imprisonment, this is just an abuse, for no one should be imprisoned save for wrongful imprisonment.

The statute about warranties is merely the revocation to right law of a prevailing error. c. 6

The statute of admeasurement is reprehensible so far as concerns the proclamations, for admeasurements and surcharges should be effected by juries *ex officio*. c. 7

The statute about mesnes is reprehensible in various points, as appears in our chapters on naams, contracts, and defaults; and this is plain from the end of the statute, for its makers did not know how to make an end to it.[2] c. 9

The statute about the suspension of writs in the eyres is reprehensible, as being repugnant to the Great Charter which says 'We will not deny nor delay justice to any.' And why is it that writs are rejected and do not come to a hearing? Because of the multitude of writs made nowadays and the small number of the justices; and thus many fail to get law. c. 10

The statute about those who are bound to account is reprehensible in divers particulars. One concerns the acceptance of persons, for a remedy is ordained for the lords and none for the servants. Another is this, that the auditors can be appointed without the assent of the servants. Another that auditors should not make allowances at their discretion without punishment.[3] Another that the c. 11

[1] See above, p. 75.

[2] At the end of this chapter the legislator confesses that he has not dealt with all existing grievances, and that further legislation will be necessary.

[3] Meaning doubtful.

par la detenue des serjaunz e mie a la sieurtie ne as chatieux. Lautre qe les seignurs ne sunt arcstables al foer des serjaunz. Lautre qe la malveistie des auditours remeint despunie. Lautre del lutlaguerie, car nul nest utlagable si non pur pecche mortiel. Lautre quant a la peine del enprisonement, car nul nest enprisonable si non pur torcenous enprisonement.

Lestatut des appeax est repernable en ij. poinz, lun de lespece de la peine corporele e de la pluralitie des peinz, desi qe redempcion par peine peccuniele nest forqe alleggiaunce de peine corporele. Lautre de juresdiccion aver sur les abbettours sanz bref origenal.

Pur lestatu de Gast

Les estatuz de gast sont fundiez sur errour, desicom gast est un personel trespas, e voet autre manere de proces sicom piert el chapitre des defautes. E a defendre personel trespas par brief nest forqe vein travail.

Lestatut de fause cause nient allouer en lessoine de mal de lit est defectif, car en nule essoigne ne nule part est fausse cause ne autre faussine allouable ne profitable ne deit estre a nul.

Li estatut des dettes e damagez recoverez est defectif, car ne mie soulement ferroit[1] cel remedie atteint en la court le Roi einz dust comprendre totes lais courz.

Lestatut des morz saunz testament est defectif, car il dust comprendre felons e futifs aussi bien cum loials genz, e le Roi e tuz autres en qi meins lur biens devenent aussi bien com ordenaires, car nul ne poet forfere autri droit.

Lestatut dallouer une manere dexcepcions en semblables accions ne fu mie mestier davoir este ordene, si non par negligence des justices, car chescun affirmation est encontrable de sa negative al peril del niant.

[1] Corr. *serroit*.

recovery is enforced by detention of the servants and not by process against their sureties and chattels. Another that the lords cannot, like the servants, be arrested. Another that the wickedness of the auditors remains unpunished. Another that there is outlawry, for none should be outlawed save for mortal sin. Another that the punishment is by imprisonment, for none should be imprisoned save for wrongful imprisonment.

The statute about appeals is reprehensible in two particulars. One concerns the nature of the punishment and the plurality of punishments, for the pecuniary punishment should be nothing else than an alleviation of the corporal punishment. The other is that which gives jurisdiction over abettors without an original writ. c. 12

The statutes about waste are based on error, for waste is a personal trespass and requires another kind of process, as appears in our chapter on defaults, and to issue a prohibitory writ against a personal trespass is labour lost. c. 14

The statute about not allowing false causes for the essoin *de malo lecti* is defective, for in no essoin and on no occasion is a false cause or other falsehood allowable, but it should profit no man. c. 17

The statute about the recovery of debts and damages[1] is defective, for this remedy should be attainable not only in the king's court, but all lay courts should be comprehended. c. 18

The statute about those who die intestate[2] is defective, for it should comprise felons and fugitives as well as lawful folk, and the king and all others into whose hands their goods shall come, as well as the ordinaries, for none can forfeit the right of another.[3] c. 19

The statute about allowing similar 'exceptions' in similar actions would have been needless but for the negligence of the justices, for every affirmative may be encountered by its negative at the peril of him who denies. c. 20

[1] The chapter which gives the *clegit*.

[2] The ordinary is to pay the intestate's debts.

[3] The king should be bound to apply the forfeited chattels of dead felons in payment of their debts.

Lestatut de detenue de service est novelerie damaious as seignurs des fieus, sicom piert el chapitre des defautes.

Lestatut de brefs noveax fere nust mie este mestier daver este fet, si la primere ordenaunce des briefs fut tenue.

Lestatut de remedie aver par assise de norele disseisine est repernable en taunt qe il ne comprent nient fieus charges de villeins custumes ne fieus tenuz a terme des anz. Le point nestovereit aver defendu fauses excepcions si les poins se tenissent del charge des contours. E quant a la peine enprisonement est lestatut repernable par resons avantdites, e aussi quant a la peine des doubles damages, car dreit ne donne a nul plus qe sa demande. E par ceo piert qe lestatut de faus apeals est plus errour qe dreit en lordenement dagarder amendez as defendaunz par la ou il ne sunt mie pleintifs. E quant del boef al oeps des viscountes en deseisines nest mie estatut einz est voluntie e tort.

E ceo qest usie a grantir damages en partie ou el tut as justices ou a clers corelaires[1] as justices ou a ministres ou a autres serroit bon defendu cum usage damaious al poeple.

E sicom les peines sunt repernables en noveles deseisines aussi sunt eles en les estatuz de redeseisines. Corporeles peines neqedent tienent lu en tiex persones[2] trespas, mes en redeseisines plus qe en seisines.[3]

Lestatut defendaunt qe briefs doir e terminer ne soient mie legerement grantie nest fondie sur nul dreit cum celi qest repugnaunt a cest mot de la chartre, nous ne voerons

[1] *contraries* (1642). [2] Corr. *personels*. [3] Corr. *desseisines*.

The statute about detention of services[1] is a novelty injurious to the lords of fees, as appears in our chapter on defaults. c. 21

The statute about making new writs need never have been made had the original ordinance about writs been observed.[2] c. 24

The statute giving a remedy by assize of novel disseisin is reprehensible, in so far as it does not comprise fees charged with villain customs or fees held for terms of years.[3] And it need not have forbidden false 'exceptions' if the articles concerning the duties of pleaders had been observed. And as to punishment by imprisonment the statute is reprehensible for reasons given above. And so as to the penalty of double damages, for law will give to none more than his demand. And therefore it is that the statute about false appeals seems rather error than law, for it awards damages to defendants, whereas defendants are not plaintiffs. And as to the ox for the use of the sheriff in disseisins, this is no statute, but lawless will and pleasure.[4] c. 25 c. 12

And as to the practice of granting the damages in whole or in part to the justices or to the clerks related to[5] the justices, or to the officers or others, it were well to forbid this as injurious to the people.

And as the punishments for disseisins are open to objection, so are those ordained by the statutes of redisseisin; still, corporal punishments are permissible for such personal trespasses, but rather for redisseisins than for disseisins. c. 26

The statute forbidding that writs of *oyer et terminer* be lightly granted is founded upon no right, but is repugnant to the words of the charter, 'We will not deny or delay c. 29

[1] The chapter gives the *Cessavit per biennium.*

[2] Aimed at the celebrated clause about writs *in consimili casu.* Our author supposes some original ordinance declaring that there shall be a writ for every wrong.

[3] Once more the doctrine that villain holders and termors should have the assize.

[4] This passage refers to the ox which the sheriff claimed from a convicted disseisor. See Bracton, f. 187, and this chapter of the statute.

[5] Translation doubtful. Apparently a successful plaintiff was in some cases expected to allow the justices or officers of the court to receive some part of the damages. See Stat. 17 Car. II. c. 6.

Lemprisonement de ij. ans ou de plus ordene pur peine corporele as ravissours de mariages nest forqe errour, car nule corporele peyne ne dust estre ordene si non pur comun prou, sicom avant piert de penaunces overtes. E ceo qest ordene de proclamacions en personeles accions nest forqe abusion de dreit, sicom est dit en lestatut de moiens.

Lestatut qe agard ranceon est repernable, car ranceon nest autre chose qe redempcion de peine corporele.

Lestatut des destresces fetes par baillifs desconuz est destinctable, car en destresces torcenouses sanz garant tendreit lu le jugement de robberie e par garaunt est chescun recevable conu e desconu.

Lestatut des jurours est repernable, car dreit voet qe les actours eient eide de la court a fere venir les testmoins dunt il se puissent plus loialment eider sauns destinteison des persones. E ceo qe juresdiccion est grantie as justices assignez doir e terminer pleintes sanz especiale commission nest forqe abusion.

Lestatut qe agard qe brief de jugement se face sanz garant de brief original nest autre chose qe congie a fauser le seal le Roi.

La peine des viscountes malement responaunt est repernable quant a la peine, car desheritours le Roi pecchent el crim de magestie e sont par consequent punissables par la mort, qe ne deit mie estre en tieux cas. E quant as issues est lestatut repernable, car nuls issues sunt agardables forqe apres defautes en accions mixtes, e ne mie al oes le Roi, einz pur le prou des pleintifs.

Les defenses fetes es estatuz suanz des clers, criours e autre ministre de la court ne sunt forqe truffe pur ceo qe eles ne sont point tenues.

Lestatut qe conoissaunces e enroullemenz qe se funt

The imprisonment for two years or more ordained as punishment for the ravishers of marriages is naught but error, for no corporal punishment should be ordained save for the good of the public, as appears where we spoke of open penances. And what is ordained about proclamations in personal actions is mere abuse of law, as is said in our remarks on the statute of mesnes. c. 35

The statute awarding ransom is reprehensible, for ransom is but a redemption of a corporal punishment. c. 36

The statute about distresses made by unknown bailiffs is distinguishable, for in the case of tortious distresses made without warrant the judgment should be as for robbery, but if there be warrant then anyone can be received [to avow the distress], be he known or unknown. c. 37

The statute about jurors [1] is reprehensible, for the law wills that the plaintiffs shall have aid of the court to cause to appear those witnesses by whom they can aid themselves most lawfully without distinction of persons. As to the grant of jurisdiction to justices assigned to hear and determine plaints without special commission, this is a mere abuse. c. 38

The statute which awards the making of a judicial writ without the warrant of an original writ is no better than a licence to falsify the king's seal. c. 38

The punishment for sheriffs who answer badly is reprehensible as regards the punishment named in it, for the disheritors of the king [2] sin by the crime of *lèse majesté* and are punishable by death, and this should not be so in these cases. And as to the issues the statute is reprehensible, for no issues are awardable except after defaults in mixed actions, and then they do not go to the king's use, but to the profit of the plaintiffs. c. 39

The prohibitions contained in the following statutes about clerks, criers, and other ministers are just humbug, for they are not regarded. c. 44

The statute that confessions and enrolments made in c. 45

[1] Relieving the poorer freeholders from jury service.

[2] The statute declares that sheriffs who make false returns are to be punished as disheritors of the king.

Lestatut de trespas pleder en conties est repernable par defaute de distinteison, car menuz trespas, dettes, covenauns enfreinz e tieux autres injuries nient passanz xl. soudz unt sutiers poer a oir e terminer saunz bref par garant de juresdiccion ordenaire e par brefs plus graunts, car viscountes unt plus aperte juresdiccion en lur briefs viscountals qe justices de banc par les pones. E notez briefment qe quanqe est toleit des plez as viscountes e as seignurs de fieus est ordene al avantage des justices al damage des viscontes qe unt les conties afferme e al damage del poeple. E quant al recoverer de xx. s. ou plus dendreit lessoine del service le Roi nient garanti est lestatut repernable, car cele essoigne porra estre gete ou li defendaunt vodra fere defaute par la partie adverse e issi averoit il avantage de sa malice.

Lestatut qe defent legier abatement de apeals nest mie tenu.

Lestatut qe agard homme innocent a demorer en prison ou daver nule manere de peine pur homicide necessaire ou par mescheaunce ou nul pecchie nest trovie nest forqe abusion.

Les estatuz fesanz mencion de Londres e des Londreis se dussent estendre commonement parmi le reaume.

[*Ch. VI. De Circumspecte agatis.*][1]

Le primer point qe dist qe la reale prohibicion ne tiegne lu en correcions des pechies mortels en cas ou peine peccuniele est enjoingnable par ordenaires, est fondie sur aperte errour ki sage[2] enjoindra peccuniele peine pur

[1] No new heading in MS. For this so-called statute, see Statutes of the Realm, vol. i. p. 101.

[2] *e usage* (1642).

out of place,[1] and they who avow it meddle so as to decrease the king's jurisdiction and belie their faith to the king.

The other articles, which would compel parishioners to enclose churchyards, to make oblations, to give mortuaries, to pay money for confessions, for the blessed bread, for the roofing of churches, for chalices, lights, holy vestments, or other ornaments of the churches, are founded rather on covetousness than on the amendment of souls, since the parsons of the churches are to be reprehended in this respect and not the parishioners, and are to be charged for these things to the extent of one-third of their tithes. As to tithes, note that so soon as they are offered to God they are things spiritual so that they may not be expended save in alms and for spiritual purposes and are not to be converted to lay uses; and therefore if any parishioner, to the wrong of the parson of the church, retains tithes, or subtracts them, or will not render them duly and fully, he is to be punished for this not by a pecuniary but by corporal punishment. From the excommunicated no money is to be demanded for their restitution to communion, no more than from a pagan or a Jew; and if money be demanded, then the prohibition is in place; and *a multo fortiori* is it in place if there be a demand for a pension, or for damages for trespass or defamation, but in pleas for correction, where the plea only makes for the amendment of the soul by means of corporal punishment, there the king's prohibition has no place.[2]

[*Ch. VII.*] *Of the Statute of Merchants.*

The new statute about debts is contrary to law, as appears in our chapter on contracts,[3] for every imprisonment of a man's body, unless it be for a wrongful [imprison-

[1] Translation doubtful. The text is corrupt.

[2] If this chapter be the work of an ecclesiastic or a canonist, he has shown a singular disregard for the worldly interests of his profession; in particular, when he throws all the expense of divine service on the parson to the alleviation of the parishioners.

[3] See above, p. 74. The new statute is the Statute Merchant, 13 Edw. I. See above, p. xxiv.

ment], is a sin; and the law will suffer no obligation or contract that is vicious by reason of an intermixture of sin. And therefore the statute should be annulled as being founded on sin, for to a contract which obliges a man to sin against himself or his neighbour no good man and no law can assent. Further, it is contrary to the Great Charter which says, 'Nullus imprisonetur nisi per legale judicium parium suorum vel per legem terrae;' and how can the punishment of imprisonment [for debt] hold good when it does not issue in money?[1]

Here endeth the Mirror of Justices concerning the right Law of Persons according to the ancient usages of England.

[1] Translation doubtful. The text requires amendment.

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[1] The numbers within brackets under this word refer to the number of the *Abuse*, not the number of the page.

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The following are among the Works contemplated for future volumes

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* For further information on these Records, see the valuable and learned "Guide to the Principal Classes of Documents preserved in the Public Record Office," by S. R. SCARGILL-BIRD, F.S.A. (London, Eyre & Spottiswoode, 1891.)

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The Society has also contemplated the collection of materials for an ANGLO-FRENCH DIC TIONARY, for which practical instructions have been kindly drawn up by Professor Skeat. The Counc will be glad to receive offers of help in this collection with a view to future publication.

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July 1895.

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FOUNDED 1887.

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7. The five vacancies in the Council shall be filled up at the Annual General Meeting in and after the year 1896 in the following manner: (*a*) Any two Members of the Society may nominate for election any other member by a writing signed by them and the nominated member, and sent

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8. The Council may fill casual vacancies happening in their number. Persons so appointed shall hold office so long as those in whose place they shall be appointed would have held office. The Council shall also have power to appoint Honorary Members of the Society.

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10. There shall be a Literary Director to be appointed and removable by the Council. The Council may make any arrangement for remunerating the Literary Director which they may think reasonable.

11. It shall be the duty of the Literary Director (but always subject to the control of the Council) to supervise the editing of the publications of the Society, to suggest suitable editors, and generally to advise the Council with respect to carrying the objects of the Society into effect.

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14. The funds of the Society, including the vouchers or securities for any investments, shall be kept at a Bank, to be selected by the Council, to an account in the name of the Society. Such funds or investments shall only be dealt with by a cheque or other authority signed by the Treasurer and countersigned by one of the Vice-Presidents or such other person as the Council may from time to time appoint.

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17. The Hon. Secretary shall keep a Minute Book wherein shall be entered a record of the transactions, as well at Meetings of the Council as at General Meetings of the Society.

18. These rules may upon proper notice be repealed, added to, or modified from time to time at any meeting of the Society. But such repeal, addition, or modification, if not unanimously agreed to, shall require the vote of not less than two-thirds of the members present and voting at such meeting.

March 1895.

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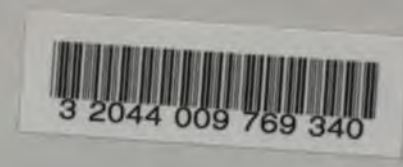

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CANCELLED
OCT 21 1990

AUG 31 1995
BOOK DUE

STALLION STUDY
SEP 17 1993
CHARGE
BOOK DUE